



महाराष्ट्र शासन राजपत्र

भाग एक-ल

वर्ष २, अंक १३२]

गुरुवार ते बुधवार, मार्च ३१-एप्रिल ६, २०१६/चैत्र ११-१७, शके १९३८

[पृष्ठे ४७, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील
(भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त)
अधिसूचना, आदेश व निवाडे.

OFFICE OF THE ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Bhonsala Chambers, Civil Lines, Nagpur, dated the 4th March 2006

NOTIFICATION

No. ALC/ADJ/PUB/ IT/ NAG/ 3 /06.— In pursuance of section 17 of the Industrial Dispute Act, 1947 (XIV of 1947) read with Government Notification, Industry, Energy and Labour Department No. IDA-2002/5686 /(2882) Lab-3, dated 19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the Enclosed Award of the Industrial Court-NAGPUR referred for adjudication by the Additional Commissioner of Labour, Nagpur in reference-IT/ 4 of 1998 in the Industrial Dispute between M/s. Maharashtra State Road Transport Corporation Central Workshop Nagpur, And Maharashtra Motor Kamgar Sangh, Nagpur, who was employed under it.

BEFORE THE INDUSTRIAL TRIBUNAL, AT NAGPUR

REFERENCE (IT) No.4/1998.—*Adjudication Between Maharashtra State Road Transport Corporation, Central Workshop, Nagpur—Party No.1. And Maharashtra Motor Kamgar Sangh, Nagpur, Congress Nagar, Near New English High School, Through, It's General Secretary, Nagpur—Party No.2.*

Corum.— Shri D. H. Deshmukh, Member.

Appearance.— Shri N.S. Bhoyar, Advocate for Party No.1.

Shri Chandrakant Jagdale, Advocate for Party No. 2.

AWARD

(20th December 2005)

This is a reference made by Dy. Commissioner of Labour, Mumbai, for adjudication of dispute raised by Party No.2 on behalf of the two workmen viz Shri D. S. Gour, Head Artisan and Shri J. M. Gupta, Artisan "C", who were employed with the Party No.1.

(2) The demand pertaining to Shri D. S. Gour is for setting and the punishment of stoppage of increment for one year. The demand on behalf of Shri J.M. Gupta is grant of selection grade of pay. However, during the adjudication process, only the demand relating to Shri D. S. Gour was pressed.

(3) According to the statement of claim at Ex.8, the concerned workman (Shri D. S. Gour) was chargesheeted on the ground that he had abused one Driver namely Shinde. An enquiry was held in a summary manner and punishment was imposed relating to stoppage of increment. It is contended that no such punishment could be granted under the Discipline and Appeal Rules. The concerned workman was allegedly innocent. The Party No. 2 has requested for setting aside. The punishment for a direction to pay the monetary benefits.

(4) The Party No.1 submitted written statement Ex.12, resisting the claim. According to the Party No.1, the punishment of stoppage of 2 increments was given after a proper enquiry and Proof of change, and it is denied that the change sheet was of summary nature. The enquiry etc. is stated to be flaw-less. The Party No.1 has contended that if the action is found to be defective on any count, then an opportunity should be given to offence endence to justify the impugned action.

(5) The issues of my findings there on are as under :—

(1) wheather the 2nd Party proves that the impugned punishment order in case of Shri D. S. Gour is illegal and unjustified ? — Yes.

1(A) Does the 2nd Party prove that the charge sheet issued was a summary change sheet, enquired into in a summary manner ? —Yes, already proved.

1(B) Does he prove that the summary chargesheet and enquiry is contrary to D. and A . Rules and illegal ? — Yes, already proved.

(2) Wheather Shri J. M. Gupta is entitled to the selection grade w. e. f. 1st July 1970 as per the settlement of 25th June 1997 ? — Not proved

(3) Wheather the 2nd Party is entitled where reliefs as prayed for ? — Yes, partly.

(4) What award ? —As per final award.

Reasons

(6) Having gone through the record and having heard Mr. Bhoyar and Mr Jagdale, the learned to towards for the parties, I find that demand relating to Shri D.S. Gour, Head Artisan, has been fully justified and deserves to be granted. The reference originally raised two demands, in repeat of Shri Gour and Shri Gupta, the Union raising the dispute did not take interest in prosecuting the matter, but Shri Gour pressed his claim. The Party No.1 had made objection application Ex.10 for answering the reference in the negative on the ground that the Party No.2 Union had no loss standi etc which application, however was rejected by my learned predecessor. Now, only Shri D. S. Gour, (The workmen concerned for Share) has prosecuted his claim.

(7) The Parties, on request were heard on preliminary issues at Sr. No 1(A) and 1(B) here in above, and this tribunal by under date 2nd December 2005, held the the chargesheet issued the concerned workmen was a summary chargesheet was enquired into in a summary manner. It was

further held that the chargesheet and the enquiry there into was contrary to Discipline and Appeal Rules and illegal. The said order was passed after taking into consideration the evidence led by the concerned workmen. Thereafter the matter was adjourned so as to enable the Party No.1 to lead evidence to justify the impugned action and to prove the alleged misconduct, in view of the pleadings in the written statement of the Party No.1.

(8) The Party No.1, however, did not offer any evidence. The Party No. 2 i.e. the concerned workman passed "No further evidence" pursuant to Ex.21. So, there is no evidence to prove the alleged misconduct of the concerned workman.

(9) Mr. Bhoyar, the learned counsel had submitted that the action was taken because the concerned workman was found to have committed misconduct, and therefore no relief can be given. The learned counsel submitted that the referred is of the union, and therefore, the concerned workman has no locus- standing to prosecute the claim in his individual capacity. It was also argued that the concerned workman has already retired and hence the demand as made cannot be granted now.

(10) Mr. Jagdale, the learned counsel on the other hand, submitted that the reference was for and on behalf of two workmen, out of whom, only Shri Gour is interested in the claim and the statement of claim pertains to Shri Gour only. The learned counsel submitted that the concerned workman is the real Party and the beneficiary. He is the affected Party. He is therefore, entitled to prove his claim. The union according to the learned counsel, is not taking interest, which should not cause prejudice or loss to the concerned workman.

Both the learned Advocates, however, admitted that the punishment of withholding up of increment in case of the concerned workman was imposed by the Party No.1 by order dated 16th September 1986.

(11) The Party No. 1 had not led any evidence, not even enquiry proceedings were produced and accordingly preliminary order was passed. Even thereafter opportunity was given, but the Party No.1 Employer failed to justify the action taken. The reference may be of the union, but is at the instance of the concerned workman. It appears that the union has lost interest in the dispute. That however does not mean that the dispute or reference has become infructuous or cannot be prosecuted. The concerned workman is entitled to press the demand. The objections raised by Mr Bhoyar, The learned counsel, Therefore are not well-founded.

With the result, I have no difficulty in holding that the Party No.1 has failed to prove the misconduct or to justify the impugned action. Hence the following award:—

Award

(I) The order dated 16th September 1986, of the Party No.1, imposing on Shri D. S. Gour, (Head Artisan), the punishment of withholding/ stopping of increment for one year, is hereby set aside. Shri D. S. Gour is accordingly, entitled to be paid all the monetary benefits of the said increment.

(II) The demand relating to Shri J. M. Gupta (Artisan 'C') stands rejected.

(III) The award be submitted to the Government.

D.H. DESHMUKH,
Member,
Industrial Tribunal,
Industrial Court, Nagpur.

Additional Commissioner of Labour,

Nagpur, dated 20th December 2005.

Nagpur.

OFFICE OF THE ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Bhonsala Chambers, Civil Lines, Nagpur, Dated the 25th April 2006

NOTIFICATION

No. ALC/ADJ/PUB/ IT/ NAG/ 4 / 05.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947) read with Government Notification, Industry, Energy and Labour Department No. IDA-2002/ 5686/ (2882) Lab-3, Dated 19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the Enclosed Award of the —Industrial Court- Nagpur referred for adjudication by the Additional Commissioner of Labour, Nagpur in reference IT/ 1, of 2006 in the Industrial Dispute between M/s. Managing Director , Lookmat Group of Newspapers, And- General Secretary, Lokmat Shramik Sanghatana who was employed under it.

REFERENCE (IT) No.1 of 2006.—Managing Director, Lokmat And General Secretary, Lokmat Group of Newspapers. Shramik Sanghatana.

Interim Award/Order

(Below Exh. 8,9,10,11 and 14)

(Passed on 3rd April, 2006)

Party No.2 has raised industrial dispute contending that the employees have completed more than 240 days continuous work with Party No. 1 and therefore, they are entitled for permanency. Conciliation Officer registered the dispute for conciliation. Both parties appeared before the Conciliation Officer but matter was not settled and therefore, failure report was submitted by the Conciliation Officer. Therefore, reference is made to this Tribunal for deciding the dispute as to whether 19 employees shown in the Schedule are entitled for permanency. After receipt of reference by this Tribunal, both parties appeared in the proceeding and filed their respective statement of claim at Exh.7 and reply at Exh.13.

2. Party No.2 has submitted in the statement of claim that the conciliation proceeding was initiated for regularisation of employees working in the establishment of Party No.1. They have completed 240 days continuous service. Out of 19 employees some of them have withdrawn their names; some of the employees have resigned during pendency of conciliation proceeding; and one employee namely. Prashant Gajbhiye has already filed his individual case in the industrial Court at Bhandara, hence his claim is not being agitated for the time being.

3. In addition to the statement of claim, party No.2 filed Exh. No.8, 9, 10 and 11. Exh.8 is filed by 7 employees with the prayer to grant interim relief during pendency of the reference directing Party No. 1 not to disturb the present status and service conditions of the concerned employees listed at Sr.No.2 to 8 alongwith Party No.2 ; pending final disposal of the Reference. It is submitted that employees at Sr. No.2 to 8 alongwith other employees raised industrial dispute before the Conciliation Officer. Some of the employees have resigned and some of the employees have withdrawn their names from the conciliation proceeding. Matter was not settled, therefore, reference is made to this Tribunal. Party No.1 pressurised other employees to withdrawn their names by threatening them to terminate their services. Party No.1 issued appointment orders by so-called contract of employment. The employment of concerned employees coming to an end on 31st March, 2006 and Party No. 1 and its officials have already threatened those employees that if they do not withdrawn their names from conciliation proceeding/ reference, their services will be terminated on 31st March, 2006.

4. It is submitted that the act of Party No.1 is in clear breach of Section 33 of the Industrial Disputes Act. Service conditions of employees are to be protected during pendency of conciliation proceeding/ reference. Party No.1 is trying to change the service conditions of these employees and therefore, prayed for direction to Party No.1 not to disturb their present status and service conditions till the disposal of reference.

5. Application Exh.9 is filed by Party No.2 alongwith the employee Pranav Priyadarshi. It is submitted that Pranav Priyadarshi has been working with Party No.1 as Chief Sub- Editor from 3rd January 2002. Post of Pranav Priyadarshi falls within the purview of Palekar Award, Bachhawat Award and Manisana Award. As per Model Standing Orders, he has completed more than 240 days continuous service and therefore, he is entitled for regularisation. It is submitted that during pendency of conciliation proceeding before the Conciliation Officer, he was orally terminated with effect from 3rd January 2006. It is submitted that Priyadarshi moved an application before the Conciliation Officer. Conciliation Officer has recorded its finding that termination is in breach of Section 33(1) of the Industrial Disputes Act, but shown his inability to pass the order because reference was made to this Court. It is submitted that termination during pendency of conciliation proceeding is illegal. Party No.1 cannot change the service conditions of employees during pendency of conciliation proceeding/reference and therefore, prayed to direct the Party No.1 to reinstate him in his former post on the same service conditions as he was enjoying on or before 3rd January 2006.

6. Application Exh.10 is filed by Shri Santosh Tikare alongwith Party No.2 saying that he was working with Party No.1 as Assistant Printer from 26th December 2003. During pendency of conciliation proceeding his service came to be terminated with effect from 25th December 2005. Applicant Suresh Wagh in Exh.11 has raised the same disputes alongwith party No.2 saying that he was working with Party No.1 from 26th November 2002 as Assistant Printer (Marathi). He was party in conciliation proceeding alongwith other employees. During pendency of the conciliation proceeding his service was terminated on 25th November 2005.

7. All the applicants in Exh. 9, 10 and 11 have submitted that the act of Party No.1 terminating their services amounts to an unfair labour practice. It is clear breach of Section 33 of the Industrial Dispute Act, therefore, they prayed for reinstatement on the same service conditions as before.

8. Party No.1 filed reply to all the application, at Exh.13. It is submitted that there are several unions namely, Lokmat Employees Welfare Association, Nagpur Union of Working Journalist, Press Kamgar Sangh, and Lokmat Shramik Sanghatana (Party No.2). All the unions are registered under the Trade Unions Act. It is submitted that Party No.2 raised the disputes for demands of regularisation and permanency in respect of 77 employees. Objection was raised before the Conciliation Officer that the employees were engaged on contract. Industrial Disputes Act, 1947 expressly permitted the employer to appoint employees on contract basis. This power cannot be taken away by the Court. They are not workman as defiend under the Industrial Disputes Act.

9. Employees knowing fully well signed the contract and are doing the work without any protest for the last several years. They do not have any grievance. In the absence of grievance, can any unrecognised union raise a dispute in respect of such employees who are not even the members of the Party No.2 union? Conciliation Officer not decided the Objections and referred the dispute to this Tribunal. Reference itself is not tenable and liable to be returned to the Conciliation Officer. It is submitted that as per schedule in the reference, names of 19 employees are shown. Out of 19 employees, some employees have withdrawn their authorisation issued to Party No.2 Six employees are no more in employment and not connected with Party No.2. Therefore, it will be clear that the disputes in repect of certain employees is not tenable at all. One employee Prashant Gajbhiye has already filed complaint case before the industrial Court at Bhandara. In view of Section 59 of the MRTU and PULP Act, 1971 there is a specific bar, therefore, the Reference is not Maintainable.

10. It is submitted that the grievance in respect of 7 employees who are claiming *status- quo* during pendency of the reference were appointed on contract and their contract comes to an end on 31st March 2006. As per provision of Section 2(o)(bb) of the Industrial Disputes Act, employer has a right to engage the employees on contract and therefore, there is no question of retrenchment or termination. It is submitted that the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (for short, "Working Journalists Act") or any other Act not prohibited the employer from engaging the employees on contract. At last submitted that interim relief applications Exh. 8, 9, 10 and 11 are liable to be rejected.

11. Party No.1 has filed application Exh.14 stating that reference be returned to the Conciliation Officer. Various grounds are raised for return of the reference to the Conciliation Officer. It is submitted that one of the employee Prashant Gajbhiye has raised dispute before the Industrial Court at Bhandara and therefore, there is a specific bar under Section 59 of the MRTU and PULP Act. Therefore, reference is not maintainable. It is submitted that Lokmat Group of Newspaper is not a legal entity. Name of the employer is M/s Lokmat Newspaper Pvt. Ltd. Therefore, Party No. 1 is not the employer and hence the reference is not maintainable. It is submitted that the reference does not disclose the nature of dispute referred to this Tribunal. It also does not disclose the designation of employees. In the entire order nowhere it has been referred as to the nature of dispute which is required to be answered either in the positive or negative by this Tribunal. Therefore, reference needs to be returned.

12. Powers of this Tribunal are referred in Section 7-A and the Third Schedule. The disputes as understood by Party No.1 from the order dated 1st February 2006 does not answer to any of the item covered by Third Schedule. Therefore, for want of specification, the disputes needs to be returned. Party No.1 has engaged the enlisted employees on contract. There is a specific provision under Section 2(o)(bb) of the Industrial Disputes Act which gives right to the employer to engage employees on contract and therefore, services of employees come to an end after the specific date mentioned in the contract of employment and hence, dispute itself is not maintainable.

13. Application Exh. 14 is strongly opposed by Party No.2 and submitted that the application is filed only to delay the matter.

14. Following Points arise for my determination. I have recorded my findings against each of them for the reasons given below.

<i>Points</i>	<i>Findings</i>
(1) Whether employees shown in Exh.8 are entitled for interim relief of <i>status- quo</i> during pendency of the reference ?	No.
(2) Whether employees shown in Exh. 9, Exh.10 and Exh.11 are entitled for reinstatement during pendency of the reference ?	No.
(3) Whether reference is not maintainable and liable to be returned ?	
(4) What order ?	As per order passed below.

Reasons

Heard learned Advocate Shri S. D. Thakur for Party No.2. He has vehemently argued that Party No.1 Lokmat Newspapers is governed by the Provisions of Working Journalists Act. As per the provisions of this Act, there is no category of workman or employee to be engaged on contract. Employees who are engaged on contract, are the working journalists and non-working journalists as defined under the said Act. When there is no provision to engage an employee on contract, stipulation of contract itself is illegal and therefore, illegal part of contract of service conditions has to go and they are deemed to be "employee" as defined under the Working Journalists Act. Learned Advocate has pointed out me Section 2, definition of non-journalist newspaper employee, etc. Learned Advocate has pointed out me Section 3 and submitted that as per this Section, provisions of Industrial Disputes Act are applicable to the employees of newspaper establishment. They are workman as defined under the industrial Disputes Act. Learned Advocate has pointed out me Section 14 and submitted that there are 20 or more employees engaged in newspaper establishment, they are entitled for the benefits of Industrial Employment (Standing Orders) Act, 1946. As per Clause 4-C of the Model Standing Orders, all the employees have completed 240 days continuous service and therefore, they are deemed to be permanent employees. Learned Advocates Shri S. D. Thakur has submitted that during pendency of the conciliation proceeding before the Conciliation Officer, some of the employees were threatened by Party No.1, therefore, they have withdrawn their names from conciliation. Some of the employees shown in Exh.9, Exh.10 and Exh.11 are terminated during pendency of the conciliation proceeding, which is a clear breach of Section 33 of the Industrial Disputes Act. As per Section 33, service conditions of the employees during pendency of the conciliation proceeding are to be protected. Therefore, learned Counsel for Party No.2 has submitted that *status-quoante* be granted to the employees shown in Exh.9, Exh.10 and Exh.11 by directing Party No.1 to reinstate them on the same service conditions as on or before their termination. Learned Advocate Shri S. D. Thakur has submitted that the employees shown in Exh. 8 are steel in employment. Their services will come to an end on 31st March 2006 and therefore, they are to be protected in view of Section 33 of the Industrial Disputes Act. Learned Advocate has submitted that reference is pending before this Tribunal. During pendency of the reference, Party No.1 cannot change the service conditions. Condition of contract is illegal because there is no specific category of contract employee in the Working Journalists Act. Learned Advocate has pointed out me. the following decisions :

- (1) HOTEL IMPERIAL-*vs*- HOTEL WORKERS UNION- 1959 II L.L.J.544 ;
- (2) ATIC INDUSTRIES LTD.-*vs*-WORKMEN- (1972) 2 SCC 88 ;
- (3) BANARAS ICE FACTORY- *vs*-THEIR WORKMEN-1957 IL.L.J.253 ;
- (4) BHAVNAGAR MUNICIPALITY-*vs*-ALIBHAI KARIMBHAI-(1977) 2 SCC 350 ;
- (5) RAJASTHAN STATE ROAD TRANSPORT CORPORATION-*vs*-KRISHNA KANT-(1995) 5 SCC 75 ;
- (6) SHESHRAO BHADUJI HATWAR-*vs*-P.O., FIRST LABOUR COURT & ORS ;
- (7) N.A.P. CONSTRUCTION CO.-*vs*-N.M.KOTHARI-1977 LAB. I.C. 1300 ; and submitted that the application Exh.8, Exh.9, Exh.10 and Exh.11 liable to be allowed.

16. Heard Learned Advocate Shri Marpakwar for Party No.1. He has submitted that there is a specific provision under Section 2(*oo*)(*bb*) of the Industrial Disputes Act which gives right to the employer to engage employees on contract. This amendment is made to the Central Act in the year 1984 with effect from 18th August 1984, therefore, the decisions cited by the side of Party No.2 which are prior to the amendment are not applicable to the present case. Learned Advocate Shri Marpakwar has submitted that all the employees have accepted the contract. With the open eyes they have signed on the contract. They are bound to follow the conditions of contract. There is no illegality or unfair labour practice on the part of Party No.1 and therefore, reference itself is not maintainable, hence the applications Exh.8, Exh.9, Exh.10 and Exh.11 are also not maintainable.

17. Learned Advocate Shri Marpakwar has submitted that the Lokmat Group of Newspapers is not the employer and therefore, reference against Lokmat Group of Newspapers itself is not maintainable. Learned Advocate has submitted that the other Industrial Court on the same ground has returned the reference to the Conciliation Officer holding that the employer is not party and therefore, award cannot be executed. In the present case also, Lokmat Group of Newspapers is not the employer and therefore, reference needs to be returned to the Conciliation Officer. Learned Advocate Shri Marpakwar has pointed out the definition of retrenchment and specific exception under clause (oo)(bb) to Section 2 of the Industrial Disputes Act. Learned Advocate has submitted that there is a specific bar under Section 59 of the MRTU and PULP Act. Employee Prashant Gajbhiye raised industrial disputes before the Industrial Court, Bhandara. Dispute is pending before that Court and therefore, reference itself is not maintainable. Learned Advocate has pointed out that the reference is vague and there are no specific questions to be answered by this Tribunal. Designation of employees are not shown and therefore, reference is liable to be returned. Learned Advocate has pointed out the decision in the case of MANAGEMENT OF SUDAMDIH COLLIERY OF BHARAT COOKING COAL LTD.-VS-THEIR WORKMAN-2006 1 LLJ 820 ; KISHORE CHANDRA SAMAL-Vs-DIVISIONAL MANAGER. ORISSA STATE CASHEW DEVELOPMENT CORPORATION LTD. 2006 1 LLJ 685 and Award in Reference (IT) No.4 of 2000 decided on 9th November 2005. Learned Advocate has submitted that in view of the specific provision under Section 2(oo)(bb) not a single employee is entitled for any relief and therefore, all interim applications filed by Party No.2 are liable to be dismissed and application Exh.14 filed by Party No.1 needs to be allowed and reference be returned back to the Conciliation Officer.

18. Learned Advocate Shri S.D. Thakur has submitted that reference cannot be returned back. It is for this Tribunal to ascertain the dispute from the record. Technicalities cannot be seen by the Tribunal. Tribunal has to record its finding from the material available on record and therefore, reference cannot be returned back. Learned Advocate has submitted that in respect of the dispute of Prashant Gajbhiye, it is in process and therefore, there is no bar of Section 59 of the MRTU and PULP Act. Learned Advocate has submitted that Lokmat Group of Newspapers and M/s Lokmat Newspapers Private Limited are the one and the same entity. He has pointed out the appointment orders. Appointment orders were issued by Personnel Manager Shri Khaparde. Heading of the letter head shows that it is a Lokmat Group of Newspapers, but it is signed for Lokmat Newspapers Pvt. Ltd. This itself shows that Lokmat Newspapers Pvt. Ltd. and Lokmat Group of Newspapers are one and the same entity. The objection raised is nothing but to misguide the Tribunal. Learned Advocate has submitted that Party No.1 has already filed writ petition before the High Court and the same grounds are raised in the writ petition. Party No.1 can press the writ petition. This Tribunal cannot return the reference. Tribunal has to decide the reference as per the evidence available on record. At last submitted that the application Exh.14 is liable to be rejected.

19. There is no dispute that all the employees shown in the schedule of reference are engaged by Party No.1 on contract. It is the submission of Party No.2 that there is no provision of contract employee in Working Journalists Act. From the perusal of this Act, there is no such type of employee. Specification of employees are given in the definition clause. There is no dispute that as per Section 3, provisions of Industrial Disputes Act to apply to the working journalists. As per Section 14, Industrial Employment (Standing Orders) Act, 1946 is applicable to the employees under the working Journalists Act. From Perusal of the whole Act, there is also no prohibition to the employer to engage any employee on contract basis. When there is no specific bar then the intention of the Legislature by amending Section 2 of the Industrial Disputes Act is to be taken into consideration; In the year 1984 Section 2(oo) of the Industrial Disputes Act is amended and Clause (bb) is added

to Section 2(oo). Though Section 2 (oo)(bb) is an exception to general definition of retrenchment but it indicates that the employer has a right to engage an employee on contract and therefore, this amendment is made by the Central Government to Section 2(oo) of the Industrial Disputes Act, 1947. As per section 2 (oo)(bb), it is an exception to the definition of retrenchment. section 2 (oo)(bb) says that when the employee is engaged on contract for a specific period and the service is terminated for non-renewal of contract, then it is not a retrenchment or termination as defined under section 2(oo) of the Industrial Disputes Act. All the employees shown in Exh.8, Exh.9, Exh.10 & Exh.11 are engaged by Party No.1 on contract basis. They have continued their employment on contract. All the employees are well educated. They have accepted the service on contract. They were well aware that their services will come to an end after a specific period. Provisions of Section 2(oo)(bb) authorises the employer not to renew the contract of service. This itself shows that when contract of service is not renewed by the employer then service comes to an end for non-renewal of contract, but it is not a retrenchment/termination as defined under Section 2(oo) of the Industrial Disputes Act.

20. Various judgement are cited by the side of Party No.2. In the case of HOTEL IMPERIAL -Vs- HOTEL WORKERS UNION- 1959 II L.L.J.544. Their Lordships of the Supreme Court have held that Industrial Tribunal has power to grant interim relief during pendency of the reference. It is further held—

“ There can be no doubt that, if for example, question of reinstatement and/ or compensation is referred to a tribunal for adjudication, the question of granting interim relief till the decision of the tribunal with respect to the same matter would be a matter incidental there to under section 10(4) and need not be specifically referred in terms to the tribunal. Thus interim relief where it is admissible can be granted as a matter incidental to the main question referred to the tribunal without being itself referred in express terms.”

There is no dispute that Tribunal can grant interim relief during pendency of the reference provided the party seeking the interim relief shall establish a *prima facie* case. In the present case, there is no *prima facie* case established by Party No. 2 because all the employees shown in Exh.8, Exh.9, Exh.10 and Exh.11 are/were engaged on contract. Their service come to an end after a specific date stipulated in the contract. Section 2(oo)(bb) authorises the employer to engage employees on contract. Though there is no specific provision in the Working Journalists Act about the category of contract employee, but from the perusal of the whole Act, there is also no bar to engage the employee on contract. Therefore, Party No.2 has failed to establish a *prima facie* case. In the case of ATIC INDUSTRIES LTD.-Vs- WORKMEN- (1972) 2 SSC 88. Their Lordships have held that Section 33 of the Industrial Disputes Act is to protect the employee and the Industrial Tribunal has jurisdiction to make a proper and reasonable order in any industrial dispute. It should be borne in mind that the foundation of the principle of industry-cum-region is that as far as possible should be uniformity of conditions of service in comparable concerns in the industry in the region so that there is no imbalance in the conditions of service between workmen in one establishment and those in the rest and therefore, employer cannot change the service conditions during pendency of the conciliation proceeding. In the case of BANARAS ICE FACTORY-Vs- their WORKMEN- 1957 I L.L.J. 253. Their Lordships have observed,

“ To ensure that proceedings in connection with Industrial Disputes already pending should be brought to a termination in a peaceful atmosphere and that no employer should during the pendency of those proceedings take any action of the kind mentioned in the sections which may give rise to fresh disputes likely to further exacerbate the already strained relation between the employer and the workmen.”

In the case of BHAVNAGAR MUNICIPALITY- Vs-ALIBHAI KARIMBHAI- .1977.2 SCC350 their Lordships have held, "In order to attract Section 33(1)(a), the following features must be present: (1) There is a proceeding in respect of an industrial disputes pending before the tribunal. (2) Conditions of service of the workmen applicable immediately before the commencement of the Tribunal proceeding are altered. (3) The alteration of the conditions of service is in regard to a matter connected with the pending industrial dispute. (4) The workmen whose conditions of service are altered are concerned in the pending industrial dispute. (5) The alteration of the conditions of service is to the prejudice of the workmen." Their Lordships further held that during pendency of conciliation proceeding the employer cannot change the service conditions of the employees.

21. In view of the above cited decision learned Advocate for Party No. 2 has submitted that the employer *i.e.* Party No.1 cannot change the service conditions of the employees during pendency of conciliation proceeding. The act of Party No.1 terminating the service of some of the employees shown in Exh.9, Exh.10 and Exh.11 is illegal and therefore, the employees are entitled for reinstatement. Learned Advocate has further pointed out me that the employees shown in Exh.8 are still in employment and therefore, they are entitled for protection. It is pertinent to note that the facts in the case of BHAVNAGAR MUNICIPALITY-Vs-ALIBHAI KARIMBHAI-(1977)2 SCC 350 are in respect of casual workers but during conciliation proceeding they were engaged on contract basis. Therefore, their Lordships come to the conclusion that it is a change of service conditions. In all the above cited decisions it is clear that employer cannot change the service conditions during pendency of the conciliation proceeding or the reference before the Industrial Tribunal. There is no dispute about it. Section itself is clear. Section 33 is very clear that the employer cannot change the service conditions.

22. Whether Party No.1 has changed the service conditions is to be seen in the present case. There is no dispute that all the employees were engaged on contract basis. The condition of service is that their service will come to an end after a stipulated period in the contract. The service conditions are mentioned in the contract itself. There is no other service conditions. Terminating the contract at the stipulated date does not come within the purview of Section 33 of the Industrial Disputes Act because there is no change in service conditions. All the employees were engaged on specific contract. They have accepted the contract knowing fully well that their services are for a specific period, mentioned in the contract. Their services are terminated by Party No.1 and therefore, it is not a change of service conditions as mentioned in Section 33 of the Industrial Disputes Act. Therefore, the act of Party No.1 cannot be said to be illegal. Party No.1 has terminated their service as per the contract, in view of provisions of Section 2(oo)(bb) of the Industrial Disputes Act, and therefore, cited decisions are not applicable to the present case. Moreover, cited decisions are prior to the year 1984. Amendment is made by the Parliament to Section 2(oo) of the Industrial Disputes Act in the year 1984. After the amendment to Section 2(oo) of the Industrial Disputes Act. now it is very clear that the employment comes to an end by non-renewal of contract and it is not a retrenchment as defined under Section 2(oo) of the industrial Disputes Act. When it is not a retrenchment or termination as defined under Section 2(oo), the employee cannot seek remedy under the Industrial Disputes Act.

23. Employees shown in Exh.8, Exh.9, Exh.10 and Exh.11 have failed to established a *prima facie* case by showing that they are regular employees of Party No.1, as defined under working Journalists Act. It is tried by Party No. 2 to show that they are the employees under working Journalists Act working as Journalists and non-working Journalists etc. From the perusal of this Act, no category of contract employee is mentioned in the said Act. But, there is also no prohibition for employer/ newspaper establishment to engage employee on contract basis and therefore, termination of contract of service cannot be said to be illegal in view of definition of section 2(oo) (bb) of the Industrial Disputes Act. Hence, Application Exh.8, Exh.9, Exh.10 and Exh.11 are liable to be rejected.

24. Party No.1 filed application Exh.14 alleging that Lokmat Group of Newspapers is not the employer of all the employees, therefore, reference is not maintainable. Learned Advocate Shri S.D. Thakur has pointed out me the appointment orders issued by Personnel Manager Shri Khaparde. From perusal of the appointment orders, letterhead of the appointment orders show that it was of Lokmat Group of Newspapers. Signature of Personnel Manager Shri Khaparde was for Lokmat Newspapers Pvt. Ltd. This itself shows that Lokmat Group of Newspapers and M/s. Newspapers Pvt.Ltd. are one and the same entity. Moreover in view of the Schedule in working Journalists Act when two or more newspaper establishment under common control shall be deemed to be one newspaper establishment. When two or more newspaper establishment owned by an individual and his or her spouse shall be deemed to be one newspaper establishment and therefore, Lokmat Group of Newspapers and M/s. Lokmat Newspapers Pvt. Ltd. are one and the same entity. Therefore, the objection raised has no force.

25. Second objection raised by Party No.1 that one Prashant Gajbhiye has filed Complaint case before the Industrial Court at Bhandara under the MRTU and PULP Act and therefore, there is a specific bar under section 59 of the said Act. there is no dispute that if any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at anytime be entertained by any authority in respect of that matter under the Central Act, or, as the case may be, the Bombay Act, and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act, or as the case may be, the Bombay Act, then no proceedings shall at anytime be entertained by the Industrial or Labour Court.

26. In view of section 59 of the MRTU and PULP Act, there is a specific bar to initiate proceeding again in respect of the same matter. The statement of claim of Party No. 2 clearly shows that they have not pressed the claim of Pradip Gajbhiye and therefore, there is no bar in respect of other. Other employees have not instituted any other case except the present reference and therefore, there is no bar under Section 59 of the MRTU and PULP Act.

27. Learned Advocate for Party No.1 has submitted that Lokmat Group of Newspaper is not the employer and therefore, reference is not maintainable. For this purpose he has pointed out me decision of the Industrial Tribunal, Nagpur in Reference (IT) No.4 of 2000. In this Reference the then Presiding Officer has recorded its finding that the hospital was run by trust and trust is not made party and therefore, Award cannot be executed without the existence of trust in the Proceeding. In the present case, I have already come to the conclusion that Lokmat Group of Newspaper and M/s. Lokmat Newspapers Pvt. Ltd. are one and the same entity, therefore, cited decision in reference (IT) No.4 of 2000 is not applicable to the present case.

28. Learned Advocate Shri Marpakwar has submitted that as per Model Standing Orders there is a category of employees who are to be regularised. As per Model Standing Orders, casual, temporary, badli employees who have completed 240 days continuous service are to be made permanent. In the present case, all the employees are contract employees. There is no specific category of contract employees in Model Standing Orders. Learned Advocate Shri Marpakwar pointed out me decision of the Apex Court in the case of M. S. CO-OP. COTTON GROWERS MARKETING FEDERATION LTD. -V/S- M. S. CO-OP. COTTON GROWERS MARKETING FEDERATION EMPLOYEES UNION reported in 1994 LAB. I. C. 959. In this case it was a case of seasonal employees. Regularisation was granted by the Tribunal. Supreme Court has come to the conclusion that seasonal employees are not entitled for regularisation because their work is only for a season. The cotton season starts from the month of October-November and comes to an end in the month of April- May of the next year. They are the seasonal employees and therefore, they

cannot be regularised for the whole year. Whether the employees enlisted in the schedule are entitled for Regularisation or not is to be decided after recording evidence because record shows that all the employees are working with Party No.1 from 2001, 2003, etc. Therefore, this tribunal has to decide whether they are entitled for Regularisation and therefore, cited decision is not applicable because they are not the seasonal employees. They are working for a whole year but on a specific contract and therefore, this Tribunal has to see as to whether they have completed 240 days continuous service and whether they are entitled for Regularisation hence the reference cannot be returned as prayed. Learned Advocate Shri Marpakwar has submitted that reference is vague, there is no designation of employees. There are no particulars what findings to be recorded by the Tribunal, shown by the Conciliation Officer and therefore, reference is liable to be returned. It is pertinent to note that Tribunal or Court has to ascertain the fact from the evidence available on record. Court or Tribunal has not to see the technicalities. Moreover, the Labour Legislations are the social legislation to protect poor employees from the high handed act of employers. In support its submission Party No.2 has pointed out me decision in the case of SHESHRAO BHADUJI HATWAR-V/S- P. O. FIRST LABOUR COURT & ORS. (1990 II LLJ 672). Their Lordships of the Bombay High Court, Nagpur Bench have held that, “ The definition of industrial dispute is itself wide enough to include any dispute or difference concerned with the employment or non-employment. There is a long line of decisions of the Supreme Court taking a view that order of reference should be liberally construed and the reference should not be rendered incompetent merely because it is made in general terms and it is always permissible for the Labour Courts or the Tribunals to construe the reference in the light of the backdrop against which it is made and to bring out the real dispute for its decision. The obvious reason for this approach is not only the width of language used in the definition of ‘industrial dispute’ in sections 2-A and 10 of the I.D. Act but also the object behind the labour legislations. Industrial peace has to be achieved as early as possible and the battle is generally between unequals. At least one party, namely, the worker cannot afford to fight continuous long drawn battle against the employer and hence technical, formal and procedural points have almost no place in the such disputes. Indeed the duty of Courts and Tribunals is to discourage ingenuity on such points and to adjudicate the controversy on merits. Many times the reference is cryptic and vague and is not properly worded. Sometimes it is not even possible to mention therein the defence of the other party. In such cases it is the duty of the adjudicating authority to examine the pleadings, documents, etc. and to locate the exact nature of dispute”.

29. In view of the above cited decision it is clear that even if the reference is vague and cryptic then also it cannot be returned. It is for the Tribunal to ascertain the fact from the material available on record. Hence, reference cannot be returned as prayed in the application Exh.14. There is no dispute that Party No.1 has also filed writ petition before the High Court for the same relief which is prayed in Exh.14. Therefore, application Exh.14 itself is not maintainable . Employees shown in application Exh.8, Exh.9, Exh.10 and Exh.11 have also failed to establish a *prima facie* case and therefore, I record my findings accordingly and proceed to pass the following orders:—

Orders Application Exh.8, Exh.9, Exh.10 and Exh.11 filed by the Party No. 2 are hereby rejected.

Application Exh.14 filed by the Party No.1 is also rejected.

Copy of interim Award be sent to the Additional Commissioner of Labour, Nagpur for publication.

Nagpur,
Dated 3rd April 2006.

M. G. Giratkar,
Member,
Industrial Court, Nagpur.

Additional Commissioner of Labour,
Nagpur.

OFFICE OF THE ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Civil Lines, Nagpur, dated the 18th September 2006

NOTIFICATION

No. ALC/ ADJ/ PUB/ IT/ NAG/6/06.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (XIV of 1947) read with Government Notification, Industry, Energy and Labour Department No. IDA/2002/ 5686/(2882) Lab-3, dated the 19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the Enclosed Award of the Industrial Court, Nagpur referred for adjudication by the Additional Commissioner of Labour, Nagpur in reference IT/1/96 in the Industrial Dispute between M/s.Chief Engineer (North Zone), M.S.E.B., Katol Road, Nagpur And Workmen Employed Under it.

BEFORE THE INDUSTRIAL TRIBUNAL, NAGPUR

PRESIDED BY SHRI M. P. KUKDAY, B. COM., LL.B.

REFERENCE (IT) No. 1 OF 1996.— Adjudication Between Chief Engineer (North Zone), Maharashtra State Electricity Board, Vidyut Bhawan, Katol Road, Nagpur *Party No. 1.*—And Workmen employed under it *Party No. 2.*

IN THE MATTER OF REFERENCE UNDER SECTION 10(1) (D)
OF THE INDUSTRIAL DISPUTES ACT, 1947.

Appearance.—Mr. A. D. Mohgaonkar, Advocate for Party No. 1.

Mr. J. A. Singh Advocate for Party No. 2.

Award

(Passed on 7th July 2006)

1. This Reference by Industries, Energy and Labour Department, Government of Maharashtra, Mantralaya, Mumbai *vide* order No.ADM. 1195/7-779/CR-522/Lab-3, dated 3rd February 1996 under section 10 sub-section (1) clause (d) read with section 12 sub-section (5) of the Industrial Disputes Act, 1947, Notification No. IDA. 1190/CR-378/Lab-3, dated 27th November 1990 made to this Tribunal. The reference is on the point “The duty timing of the employees working in EHV. O and M Dn. Nagpur have been changed and fixed from, 9-00 a.m. instead 8-00 a.m. without giving notice of change under Section 9-A which is illegal.”

2. The parties upon receiving notice, Party No. 2 has submitted the Statement of Claim *vide* Ex. 7 in justification of dispute referred to his Court. It is submitted that Party No. 2 Vidarbha Rashtriya Electrical Workers Union, Nagpur is registered union with registration No. 4006 for Vidarbha. The strike notice was served on 9th August 1994 to the Chief Engineer (NZ), M. S. E. Board, Nagpur, the Party No. 1. The conciliation proceedings failed before the conciliation Officer *i.e.* competent authority under Industrial Disputes Act. The timing of technical workers working under supervision and control of Party No.1 were from 8-00 a.m. to 17-00 hours with recess for one hour from 12 noon to 13-00 hours. The timing of the employees of EHV (O&M) were as per Service Regulation Section 7 of chapter 1. These timings are changed from 9-00 hours to 18-00 hours with recess of one hour 13-00 hours to 14.00 hours as per Circular No.EE/EHV/(O&M) Dn./ NGP/GAD/3764, dated 25th September 1992. The timings were changed by Party No. 1 under its order dated 3rd March 1997 without giving notice of change under Section 9-A of the Industrial Disputes Act, 1947. The notice dated 2nd December 1995 regarding the said change was served on the employees of EHV (O&M) Division, M. S. E. Board, Nagpur.

3. The over time sheets were filled by the employees and fill in conciliation case as per new timings effected as per circular dated 25th September 1992 for the period October 1992 to March 1995. The over time sheets submitted to the Board for the month of May, 1991 as per timing from 8-00 hours to 17-00 hours. It is thus prayed that timing from 8-00 hours to 17-00 hours. *i.e.* original working hours be restored.

4. The Party No.1 Maharashtra State Electricity Board has filed their Written Statement at Ex. 13 submitting that the Reference is liable to be answered in negative as it is made without considering the provisions of rules applicable to the employees working in the Board. The party No. 2 may be a registered union but does not have any recognition as such.

5. The strike notice was served on Party No. 1 on 9th August 1994 by Party No. 2. The period has lapsed from the date of issuance of impugned circular and the strike notice itself show that the circular issued was absolutely in accordance with rules. There were negotiations between the parties but the Party No. 2 could not show any substance in their demand. Consequently did not satisfy the Party No. 1. In the conciliation proceedings the Party No. 1 has satisfied the Conciliation Officer that the change in timing is within the frame work of the provisions of service regulations. No conciliation could be arrived and therefore the Reference is made. The Executive Engineer is the officer in-charge of EHV (O&M) Division, Nagpur working with ten sub-divisions under his command. As per clause 20(2) of the M.S.E.B. Employees Service Regulations the officer in-charge of the unit concerned has a power to fix working hours in a unit. Accordingly the circular dated 25th September 1992 was issued under the powers of Party No. 1. The Reference therefore is not tenable and liable to be answered in the negative.

6. The Executive Engineer, Party No.1 upon taking over of charge on 6th February 1992 has noticed that though duty hours are from 8-00 hours to 17-00 hours with one hour recess the majority of the Maintenance crew did not attend duty at 8-00 hours. The fact has been verified by making personal visit to sub-stations. It was also noticed that the workers were not maintaining diary and used to claim the over time showing work of more than eight hours. The change of timing is made to break the unsustainable practice and saving uncalled for expenditure towards over time. The total number of duty hours are not changed. The working hours remains to eight hours. The change in duty hours is required to be made in the interest of Board. The earlier fixing of duty hours from 8-00 hours to 17-00 hours is not a statutory right nor it is carved out in rule, circular, agreement, award or settlement. In the circumstances no notice of change is required much less there is no change in working/duty hours of the employees. The power of the Executive Engineer fixing working hours is included in Appendix "A". The matter thus does not fall within the matters specified in the 4th Schedule of Industrial Dispute Act. It is not all necessary to give notice of change and therefore the Reference is liable to be rejected. Under clause 7 of service regulations the powers are vested with the Board to prescribe the hours of attendance for different categories and there is authorisation given to the competent authority to adjust the timing according to the exigencies of work. In the instant case under Clause 20 of the service regulations the working hours are fixed by the competent authority Party No.1.

7. It is there further submitted that over time sheets are not the relevant documents for determining the necessity of notice of change. The over time sheet is not the subject matter. The employees might have lost the opportunity to claim the over time to which they were not entitled. The Reference for the reasons is required to be answered in the negative.

8. The additional statement by application Ex. 18 appears to have been submitted by the Party No. 2. The substance as in regard to the dispute appears to have been considered by my predecessor while passing order below Ex. 9. The subsequent additional statement attempting to be incorporated deserves not to be considered as they are not connected with the Reference in dispute.

9. The learned counsel for the Party No. 2 has filed written notes of arguments Ex. 28 and also has argued the matter before this Court submitting that admittedly earlier working hours were from 8-00 hours to 12-00 hours and 13-00 hours to 17-00 hours with one hours recess but *vide* circular dated 25th September 1992 changed the timing of duty from 9-00 hours to 13-00 hours and 14-00 hours to 18-00 hours with one hour recess. The change in the working hours were protested by the employees *vide* representation dated 9th November 1992 but it was not responded. The strike notice was served on 9th August 1994 under Section 22 of the Industrial Disputes Act. The notice is admitted by the Conciliation Officer and therefore the parties were called for discussion on 6th September 1994 at 11-00 a.m. The parties have submitted their respective claims but conciliation failed and the government has referred the dispute to this Court.

10. It is there further submitted that there is clear failure on the part of the respondents in respect of compliance of provisions of Section 9A, Schedule IV, Item No. 4 of the Industrial Dispute Act. The said provision is with the mandate. The change in working hours from a part of service condition of employees and the said change is without giving requisite notice. The similar condition occurs under Section 37 of the Industrial Disputes Act and such notice is to be issued under Form No. XIII of the fourth schedule. The huge amount earned by the employee under over time has been garbed away and therefore the employees are victimised. The over time has been returned by the Executive Engineer on 23rd December 1993 without any justification. The demand of over time made under justification letter dated 24th January 1994 is a legitimate demand of the employees. The employees are entitled for over time claim for the period under the change of working hours along with interest @ 12%.

11. The submissions in rival are that rule 20 sub-rule (2) of the M. S. E. B. Employees Service Regulations empowers Party No. 1 to set the hours of working. The total duty hours are not changed. They remain eight hours. There is no change in recess of one hour and as such there being no change in duty hours change of timing does not amount to change and therefore the Reference is to be answered in the negative.

12. Both the parties have not led any oral evidence. There is no controversy that the reference is limited to the change of duty time from 8-00 hours to 9-00 hours and 17-00 hours to 18-00 hours whether amounts to a change within the meaning of Section 9-A of the Industrial Disputes Act. Such change is whether requires a notice and/or in the absence of such notice whether it is an illegal change.

13. The attention of learned counsel for the parties is invited to Clause 20(2) of the M. S. E. B. Employees Service Regulations. It reads as before :

“In the case of employees included in Appendix “A”, the hours of work shall be eight hours per day as may be fixed by the Officer in-charge of the Unit concerned exclusive of recess.”

Section 9-A of the Industrial Disputes Act reads as before :—

“S. 9A. Notice of change.— No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,—

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected ; or

(b) within twenty-one days of giving such notice ;

Provided that no notice shall be required for effecting any such change—

(a) where the change is effected in pursuance of any settlement or award ;
or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Service (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the *Official Gazette*, apply.”

There is no dispute over the powers in fixing the timing of the working hours by the Officer-in-charge of the Unit concerned. The rules directs that total working hours shall be eight hours exclusive of the recess. In the light of this rule and above provision the attention is invited to the

citation of Transport and Dock Workers Union and Anr.—*vs*— Chowgule Stemships Ltd. and Anr. (1995 II C. L. R. 45). Head note with para 10 reads as before :—

“ Industrial Disputes Act, 1947—S. 9A—Schedule 4—Notice of change—Hours of Work—Shift timings of telephone operators changed—Whether the same required notice of change—Held that what was changed in the instant case was the period of work or the shift timing and not the hours of work and hence did not fall withing Item 4 of the Fourth Schedule and that being so Section 9-A was not attracted.”

“ Para 10. Mr. Deshmukh, learned counsel for the appellants drew our attention to the dictionary meaning of the word “ hours ” and submitted that considering the dictionary meaning as well as the object and purpose of Section 9-A, we should give the expression “ hours of work ” a wider interpretation to mean not only “ hours of work ”, but also the “ period of work ”. We find it difficult to accept the above submission. Section 9A has got a definite purpose and object. It provides for service of notice on the workman affected in any change in the conditions of service in respect of matters set out in Fourth Schedule. It is not any and every change which attracts Section 9-A. It is only in case of changes in respect of matters specified in the Fourth Schedule that a notice is contemplated under Section 9-A to the effected workmen. In our opinion, the legislature has rightly included “ hours of work ” in the Fourth Schedule as a condition of service on any change in respect of which Section 9-A would be attracted and has deliberately avoided the use of the expression “ periods of work ” which it has itself used in other legislations, such as the Factories Act. The change in the hours of work may affect the workman so it has been included in Item 4 of the Fourth Schedule its scope cannot be expanded by interpreting it to mean or include “ hours of work ”. ”

14. The learned counsel for the parties may probably not dispute that timing of working hours and the actual working hours are independent and separate. The learned counsel for the parties much less of Party No. 2 may probably not dispute that there is no change in working hours *i.e.* eight hours per day. The change effected is the timing for the prescribed working hours. Instead of 8-00 a.m. working hours is to commence from 9-00a.m.with the recess of one hour intervening the total eight hours. The recess is now from 13-00 hours to 14-00 hours and again the work is to be resumed for the second half of four hours. In the light of the aforesaid uncontroverted fact, Section 9-A of the Industrial Dispute Act does not contemplate the change in time of work is a change in working hours and as such no notice is required to be given. The Reference thus is to be answered in the negative.

15. Heard the learned counsel for the parties. In sequel the following award is made in this Reference.

Award

The Reference is answered in the negative. The publication of award be made. The conciliation papers be returned to the office of Conciliation Officer. No orders as to cost.

Dictated in open Court.

Nagpur,

dated the 7th July 2006.

M. P. KUKDAY,

Presiding Officer,

Industrial Tribunal, Nagpur.

Additional Commissioner of Labour,
Nagpur.

OFFICE OF THE ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Bhonsala Chambers, Civil Lines, Nagpur, dated 23rd November 2006.

NOTIFICATION

No. ALC/ ADJ/ PUB/ IT/ NAG/8/06.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (XIV of 1947) read with Government Notification, Industry, Energy and Labour Department, No. IDA. 2002/ 5686/ (2882)/Lab-3, dated the 19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the enclosed Award of the Industrial Court, Nagpur referred for adjudication by the Additional Commissioner of Labour, Nagpur in reference IT/ 1 of 2001 in the Industrial Dispute between M/s. Raptakos, Brett and Co. Ltd., M.I.D.C., Nagpur and their workmen who was employed under it.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA (NAGPUR BENCH), NAGPUR

REFERENCE (BIR) No. 1 OF 2001.—Adjudication between M/s. Raptakos, Brett and Co.Ltd., B-7/B-9-1, Hingna Industrial Estate, MIDC., Nagpur- 16 —*Party No. 1— And Their Workmen— Party No. 2.*

IN THE MATTER OF REFERENCE UNDER SECTION 73(2)
OF THE BOMBAY INDUSTRIAL RELATIONS ACT, 1946.

CORUM.— Shri M. P. Kukday, B.Com., LL.B., Member.

Appearances.— Mr. R. E. Moharir, Advocate for Party No. 1.

Mr. S. D. Thakur, Advocate for Party No. 2.

Award

(Passed on 3rd October 2006.)

1. This Reference under Section 73(2) of the Bombay Industrial Relations Act, 1946 by the Government of Maharashtra, Industries, Energy and Labour Department, Mumbai. It appears that there was a dispute between M/s. Raptakos, Brett and Co. Ltd. situated at B-7/B-9/1. Hingna MIDC., Nagpur and their workmen brought to the Conciliation Officer regarding various demands. The possibility of conciliation being ruled out the Reference is made on various demands specified in Schedule. The workmen have made demands of pay fixation etc. and so on.

2. After receipt of the Reference notices are issued to the parties. The Party No.2 has submitted Statement of Claim *vide* Ex.8 in support of their demands raised in the Schedule of Reference. The Party No.1 the employer has filed Written Statement Ex.12 in reply to the statement of claim. It there further appears from the documents alongwith written statement that the management of the Party No.1, M/s. Raptakos, Brett and Co. Ltd. has sold the establishment under the transfer of undertaking to M/s. Satyam Pharmaceutical and Chemicals Pvt. Ltd. and therefore the name of Party No.1 was applied to be deleted rather substituted by adding. It there further appears that Ex. 14 is the application for taking the case on the board of 28th July 2004 alongwith pursis Ex. 15 signed by counsel for both the parties stating that the parties have settled out their dispute out of Court and no monetary claim of any nature exist against the company with the prayer of disposing of the Reference accordingly. Upon taking over of the charge of this Court the learned counsel for the parties were given chance to confirm the contents of the pursis from their clients but then it is submitted by learned counsel for the Party No.2 workmen that his clients are not approaching him. It is in the circumstances it appears that the long pending demands have been settled out by the parties out of Court much less after transfer of the establishment from M/s. Raptakos, Brett and Co.Ltd. to M/s. Satyam Pharmaceutical and Chemicals Pvt. Limited. No dispute now exist. Therefore the reference is to be answered in the negative. It is so answered.

M. P. KUKDAY,

Member,

Industrial Court, Nagpur.

Nagpur,
dated 3rd October 2006.

Additional Commissioner of Labour,
Nagpur.

OFFICE OF THE ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Bhonsala Chambers, Civil Lines, Nagpur, dated the 18th January 2007.

NOTIFICATION

No. ALC/ ADJ/ PUB/ IT/ NAG/1/07.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (XIV of 1947) read with Government Notification, Industry, Energy and Labour Department, No. IDA. 2002/ 5686/ (2882)/Lab-3, dated the 19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the enclosed Award of the Industrial Court, Nagpur referred for adjudication by the Additional Commissioner of Labours, Nagpur in reference *IT/3 of 2000* in the Industrial Dispute between M/s. Shivraj Fine Art Litho Works, Nagpur and General Secretary, Litho Press Kamgar Union, Nagpur. Who was employed under it.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA (NAGPUR BENCH), NAGPUR

REFERENCE (BIR) No. 3 OF 2000.— Litho Press Kamgar Union, Shaniwari, Subhash Road, Nagpur 440 018, through its General Secretary. —*Applicant.*— And M/s. Shivraj Fine Art Litho Works (Under the Management of Director, Government Printing and Stationary, Mumbai), Subhash Road, Nagpur 440 018, through its Manager.— *Non-applicant.*

Award

(Passed on 22nd November 2006.)

The parties have been absent on several dates. The Rojnama indicate that on 23rd September 2005, my learned predecessor had adjourned the matter for passing appropriate order since the applicant was absent. Even thereafter the matter was adjourned from time to time. No evidence is led. The matter is unattended. The reference application, therefore, stands dismissed in default.

The copies be sent to all the concerned.

dated 22nd November 2006.

D. H. DESHMUKH,
I/c, Presiding Officer,
Industrial Court(C), Nagpur.

Additional Commissioner
of Labour Nagpur.

OFFICE OF THE ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Bhonsala Chambers, Civil Lines, Nagpur, dated the 18th January 2007.

NOTIFICATION

No. ALC/ ADJ/ PUB/ IT/ NAG/2/07.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (XIV of 1947) read with Government Notification, Industry, Energy and Labour Department, No. IDA/2002/ 5686/ (2882) Lab-3, dated the 19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the enclosed Award of the Industrial Court, Nagpur referred for adjudication by the Additional Commissioner of Labour, Nagpur in reference *IT/3/2004* in the Industrial Dispute between M/s. The President/Secretary, Vidarbha Premier Co-op. of Housing Society, Nagpur And The President/Secretary, Vidarbha Premier Co-op. Housing Society Karmachari Union, Nagpur. Who was employed under it.

BEFORE SHRI M. A. POTEY,

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, NAGPUR

REFERENCE (IT) No. 3 of 2004.— Adjudication between : The President/Secretary, Vidarbha Premier Co-op. Housing Society, Near Gandhi Sagar, Tilak Putala, Mahal, Nagpur. — *Party No. 1.— versus* The President/Secretary, Vidarbha Premier Co-op. Housing Society Karmachari Union, C/o. Vidarbha Premier Co-op. Housing Society, Near Gandhi Sagar, Tilak Putala, Mahal, Nagpur.— *Party No. 2.*

IN THE MATTER OF REFERENCE UNDER SECTION 10 (2) READ WITH SECTION 12 (5)
OF THE INDUSTRIAL DISPUTES ACT, 1947.

Appearances.— Both parties are absent.

Award

(Passed on this 18th Day of November, 2006.)

The Additional Commissioner of Labour, Nagpur (Vidarbha Region). As per his letter dated 26th February 2004 has forwarded this Reference to this Tribunal under section 10 (2) of the Industrial Disputes Act, 1947, for adjudication.

2. The dispute arose between President/Secretary, the Vidarbha Premier Co-operative Housing Society Ltd., Gandhi Sagar, Nagpur and the President/Secretary, the Vidarbha Premier Co-operative Housing Society Employees' Union, Nagpur. The Conciliation Officer tried to conciliate the matter by calling both the parties, but the conciliation failed and therefore, he forwarded the reference to this Tribunal for decision.

3. Both the parties appeared in pursuance to the notices issued to them by the Tribunal. But, the record reveals that despite repeated chances given, the Party No. 2 failed to submit its statement of demands. As no demand put forth before this Tribunal by the Party No. 2, there remains nothing to enquire about the alleged dispute between the Party No. 1 and Party No. 2. In the circumstance, I left with no alternative but to answer the Reference in negative, for want of statement of claim. Hence, the Award.

Award

The Reference is answered in negative.

The record be sent back to the Additional.

Commissioner of Labour, Nagpur.

(Vidarbha Region) with the copy of this Award.

Nagpur,
dated 18th November 2006.

M. A. POTEY,
Presiding Officer,
Industrial Tribunal, Nagpur.

Additional Commissioner of Labour,
Nagpur.

OFFICE OF THE ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Bhonsala Chambers, Civil Lines, Nagpur, dated the 15th March 2007.

NOTIFICATION

No. ALC/ADJ/PUB/IT/NAG/5/07.—In pursuance of section 17 of Industrial Dispute Act, 1947 (XIV of 1947) read with Government Notification, Industry Energy and Labour Department No. IDA,2002/5686/(2882)LAB-3, dated 19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the enclosed Award of the Industrial Court, Nagpur referred for adjudication by the Additional Commissioner of Labour, Nagpur in reference IT/6 of 2006 in the Industrial dispute between M/s. Manager, Esab India Limited, Kalmeshwar, Dist. Nagpur and their Workmen who was employed under it.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA

(NAGPUR BENCH), NAGPUR

REFERENCE (IT) No. 6 OF 2006.—Between Manager, M/s. Esab India Limited, Kalmeshwar, District Nagpur—*Party No.1—And—Their Workmen—Party No. 2.*

**IN THE MATTER OF REFERENCE UNDER SECTION 76 (2) OF THE BOMBAY
INDUSTRIAL RELATIONS ACT, 1946.**

CORUM.— Shri M.A. Potey, Member.

Appearances.— Shri P.C. Marpakwar, Advocate for Party No. 1.

Shri S.W. Sambre, Advocate for Party No. 2.

Award

(Passed on 10th January 2007)

This is a Reference made by the Government of Maharashtra under the Bombay Industrial Relations Act, 1946 for adjudication of an Industrial dispute between Manager, M/s. Esab India Limited, Kalmeshwar, District Nagpur and Their Workmen, over the demands set out in the order of reference dated 31st July 2006.

2. Both the parties appeared in pursuance to the notices issued to them by the Court. The case was fixed for filing statement of claim by the Party No.2. In the meantime, Party No. 1 filed purshis at Exh. 14 stating that the matter has been finally settled between the parties *vide* settlement dated 21st November 2006, and hence the reference be disposed off. The elected representatives S/Shri Kuber Mehta, M. Likhar and Y. S. Mogam have given no objection on the purshis Exh. 14.

3. I have gone through the purshis Exh. 14 and the xerox copy of letter dated 18th December 2006 of the Assistant Registrar of Unions, Bombay Industrial Relations Act, 1946, Nagpur stating that the settlement has been registered on 18th December 2006 at entry No. 24/06. It appears that the matter is settled between the parties amicably and nothing remains to be adjudicated in the present reference. In the circumstance, the reference is disposed off accordingly.

Nagpur,
dated 10th January 2007.

M. A. POTEY,
Member,
Industrial Court, Nagpur.

Additional Commissioner of Labour,
Nagpur.

OFFICE OF THE ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Bhonsala Chambers, Civil Lines, Nagpur, dated the 15th March 2007

NOTIFICATION

No. ALC/ADJ/PUB/ IT/ NAG/3/07.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947) read with Government Notification, Industries, Energy and Labour Department No. IDA.2002/ 5686/ (2882) Lab-3, dated 19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the Enclosed Award of the —Industrial Court-Nagpur referred for adjudication by the Additional Commissioner of Labour, Nagpur in reference IT/ 2 of 2004 in the Industrial Dispute between M/s. General Manager, Neco Sehubert & Salzer Ltd. M. I. D. C. Nagpur and its Employees.

Who was employed under it.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA
(NAGPUR BENCH), NAGPUR

REFERENCE (BIR) NO. 2 OF 2004.—Adjudication Between General Manager, Neco Sehubert & Salzer Ltd., Plot No.T-45, MIDC, Hingna Road, Nagpur.—*Party No. 1. And It's employees.—Party No. 2.*

IN THE MATTER OF REFERENCE U/S. 73 (2) OF
THE BOMBAY INDUSTRIAL RELATIONS ACT, 1946

CORUM.— SHRI M. P. KUKDAY, B.COM., LL.B. Member.

Appearances.— Mr. P. C. Marpakwar, Advocate for *Party No. 1* .
Mr. M. V. Mohokar, Advocate for *Party No. 2.*

Award

(Passed on 20th January 2007)

1. This Reference under section 73(2) of the Bombay Industrial Relations Act, 1946 has been made to this Court by the competent authority, Industries, Energy & Labour Department, Government of Maharashtra on 27th August 2004 for adjudication over the total 24 demands specified in the reference order dated 23rd August 2004.

2. Upon receiving of Reference to this Court notices were issued to both the parties. The Party No.2 has filed Statement of Claim Ex.8 on 15th September 2006. The Party No.1 has moved an application Ex.10 for better particulars submitting that Party No.1 is not in existence, therefore, the order of Reference has got to be suitably modified. However, the Party No.2 has not cared for getting amended the Reference much less has made a statement of claim against Party No.1 which is said to be not in existence. It is in the existing circumstances and in the light of the statement made at bar that the Party No.1 does not survive and or has no legal existence, the Reference is to be disposed of. The parties are at liberty to take suitable steps in this regard. The Reference is thus answered in the negative.

Nagpur,
dated 20th January 2007.

M. P. KUKDAY,
Member,

Industrial Court, Nagpur.

Additional Commissioner of Labour,
Nagpur.

OFFICE OF THE ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Bhonsala Chambers, Civil Lines, Nagpur, Dated the 15th March 2007

NOTIFICATION

No. ALC/ADJ/PUB/ IT/ NAG/4 / 07.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947) read with Government Notification, Industries, Energy and Labour Department No. IDA.2002/ 5686/ (2882) Lab-3, Dated 19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the Enclosed Award of the —Industrial Court- Nagpur referred for adjudication by the Additional Commissioner of Labour, Nagpur in reference IT/ 8 of 2001 in the Industrial Dispute between M/s. Nagpur Zilla Shetkari Sahakari Soot Girni, Hingna, Nagpur and Its Employees.

Who was employed under it.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA
(NAGPUR BENCH), NAGPUR

REFERENCE (BIR) NO.8 OF 2001.—Adjudication Between Nagpur Zilla Shetkari Sahakari Soot Girni, Hingna, Nagpur.—*Party No. 1. And It's employees.—Party No. 2.*

IN THE MATTER OF REFERENCE U/S. 73(2) OF
THE BOMBAY INDUSTRIAL RELATIONS ACT, 1946.

CORUM.— SHRI M. P. KUKDAY, B.Com., LL.B. Member.

Appearances.— None present for Party No. 1 and 2.

Award

(Passed on 18th January 2007)

1. This Reference under section 73(2) of the Bombay Industrial Relations Act, 1946 has been made to this Court by the competent authority, Industries, Energy & Labour Department, Government of Maharashtra on 2nd March 2001 for adjudication over the demands specified in Schedule below order dated 10th February 2001.

2. The Party No. 2, Elected Representatives of employees of the Nagpur Zilla Shetkari Sahakari Soot Girni, Hingna have raised various demands. The matter could not be conciliated and hence the Reference is made to this Court.

3. The notices were issued to both the parties by order dated 14th March 2000. The notices were served *vide* Ex.2 and 3 but none appeared before this Court. The Party No. 2 has not filed even Statement of Claim in justification of demands raised. It appears that either the parties have resolved the dispute then raised in 2001 and or they are not having any interest to prosecute their dispute due to passage of time. It is in these circumstances the Reference made to this Court is to be answered in the negative.

Award

The Reference is answered in negative for want of prosecution with no orders as to cost.

Nagpur,
dated 18th January 2007.

M. P. KUKDAY,
Member,
Industrial Court, Nagpur.

Additional Commissioner of Labour,
Nagpur.

OFFICE OF THE ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Bhonsala Chambers, Civil Lines, Nagpur, Dated the 17th May 2007

NOTIFICATION

No. ALC/ADJ/PUB/ IT/ NAG/ 6 / 07.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (XIV of 1947) read with Government Notification, Industries, Energy and Labour Department No. IDA.2002/ 5686/ (2882) LAB-3, Dated 19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the Enclosed Award of the —Industrial Court—Nagpur referred for adjudication by the Additional Commissioner of Labour, Nagpur in reference—IT/ 2 of 2002 in the Industrial Dispute between M/s. Kokan Agro Marine Industries Pvt. Ltd., Nagpur and its employees represented by elected representative.

Who was employed under it.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA

(NAGPUR BENCH), NAGPUR

REFERENCE (BIR) No. 2 OF 2002.—M/s. Kokan Agro Marine Industries Pvt. Ltd., Piwali Nadi, Kamptee Road, Nagpur.—*First Party. Versus* Its Employees represented by Elected Representative, viz.—(1) Smt. Ashabai Nagpure, (2) Smt. Indubai Pawar, (3) Smt. Jayabai Surywanshi, (4) Smt. Jijabai Watkar, (5) Smt. Malan Kapse, C/o. M/s. Kokan Argo-Marine Industries Pvt. Ltd., Piwali Nadi, Kamptee Road, Nagpur.—*Second Party.*

IN THE MATTER OF REFERENCE UNDER SECTION 73(2) OF
BOMBAY INDUSTRIAL RELATIONS ACT, 1946

CORUM.— Shri D.H. Deshmukh., B. A., M.Com., LL.B., DBM. MIRPM Member.

Advocates.— Shri D.M. Kakani for the First Party.

Shri B. Lahiri for the Second Party.

Award

(Passed on this 5th March 2007)

This is a reference made by the Government of Maharashtra for adjudication of industrial dispute between M/s. Kokan Agro Marine Industries Pvt. Ltd., Nagpur the First Party 1, and its employees duly represented by the elected representatives (the Second Party).

2. According to the statement of claim Exh.9, submitted by the Second Party, the First Party/Company produces Country Liquor, and there are 52 female workers in the firm, who have selected their representative under the Bombay Industrial Relations Act, 1946. The elected representatives had raised dispute making several demands. Various demands are as follows:—

(1) All the employees should be made permanent and should be given the benefits available in law.

(2) Arrears on account of minimum wages should be paid to the employees.

(3) The employees should be extended pay-scale of Rs. 2,000 per month in case of skilled employee, Rs.1,900 in case of semi-skilled employees, and Rs.1,800 per month in case of unskilled employees.

(4) Every employee should be paid Dearness Allowance at the rate of 20% of the basic pay.

(5) Dearness Allowance should be periodically raised by 5% per point as per Consumer Price Index of industrial employees (basis year 1982=100).

(6) House Rent Allowance should be paid @10% of the basic, Pay.

(7) The annual increment of 10% of the basic pay should be granted to all the employees.

(8) The female employees should be provided a pair of Sarees and Blouse, as well as safety shoes every year.

(9) Washing Allowance of Rs.50 should be paid to each employee.

(10) The employees should be allowed to avail the holidays on 26th January, 14th April, 15th August, 1st May, 2nd October, 25th December and Id-A-Milad day and also 20 other holidays on different religious occasions. Besides, each employee should be allowed to avail 15 days' casual leave in a year. Further the employees should be granted leave with wages or holidays on all Government declared holidays.

(11) The employees should be provided with Attendance Card, Wage Card, Leave Record, and Identity Card.

(12) Employees State Insurance Scheme and Provident Fund Scheme should be made applicable to all the employees.

(13) All female employees removed from services should be reinstated.

(14) The contract system for carrying out the work of permanent nature should be abolished.

(15) If the services of the Contractor are required to be availed, only female employees should be recruited.

(16) The employees should be given interest free advance of Rs.10,000 for the purposes of marriage or house building, and the same should be repayable in 100 equal monthly installments.

(17) Festival Advance of Rs. 2,000 should be granted, repayable in 100 equal monthly installments.

(18) Each employee should be granted bonus/*ex-gratia* of 20%, 10 days before Diwali.

3. In all there are 18 demands referred by the State Government. The statement of claim only mentions that the Party No.1 refused to deliberate or negotiate on the matter, but since the conciliation papers are not available, it is difficult to accept the said contention.

4. The First Party has opposed the claim by written statement Exh.13. The First Party has contended that the industry is running in losses. The industry was previously closed because of suspension of licence for quite some time. In regard to permanency, it is stated that all the employees including the contractor's employees are being provided all the statutory benefirs. The question of making permanent contractor's employees does not arise. In regard to the contract employees the only remedy is stated to be under the Contract Labour (Regulation and Aboliation) Act, 1970. In regard to minimum wages, it is stated that all the employees have been paid minimum wages notified by the Government from time to time, The concerned authorities had inspected the factory from time to time, and have found that the minimum wages are being paid to all the employees. It is contended that the employees are working on Filling Belt, for which no skill is required, and all the employees are unskilled. The bottles are filled in by automatic and semi-automatic machines, and sealing is also done automatically. The employees have only to lift the bottles after filling and sealing is done. In regard to the payment of basic wages, it is contended that the industry falls in Zone-II of the Notification of the State Government. The Government after considering over all situation of the liquor industries had fixed the minimum wages for the first time by Notification dated 11th January 1999. The minimum wages were fixed after considering the financial condition of the liquor industries. The First Party claims to be unable to pay wages over and above the minimum wages, in any form.

5. The industry was closed in 1997. The total losses were Rs.24 lakhs. The losses rose over Rs. 77 lakhs in 1998-99. As on the date of filing of the written statement, the losses were more than 10 lakhs. The First Party has contended that it cannot take any additional financial burden. For the same reason any rise in dearness allowance is not acceptable to the First Party because it is already paying the dearness allowance notified by the Government from time to time. On account of financial constraints, the claim of rise or revision in dearness allowance is also opposed. It is stated that no justification or logic has been given in the statement of claim. As far as the House Rent Allowance is concerned, it is stated that the provisions of the Maharashtra Minimum House Rent Allowance Act would be applicable to the First Party, and as and when this happens, the employees would be paid the statutory House Rent Allowance. The H.R.A. as claimed would create huge financial burden, according to the First Party.

6. In regard to annual increment to pay, it is stated that the Government of Maharashtra has taken adequate care while fixing the minimum wages as well as dearness allowance. In view of financial condition, this demand is also not possible to meet. As regards uniforms and safety equipments, it is stated that the female employees have to work on Filling Belt. The Factory Inspectors had prohibited performing duties on Filling Belt by wearing sarees. Therefore, the First Party had provided to the employees Apron and Overcoat. Some of the employees demanded the Apron, while some others are demanding Sarees. From safety point of view, wearing Saree is not advisable. The Management has already given Aprons. It is stated in para 10 that the Management has already given Gum-Boots by way of safety measures. Therefore, nothing remains to be provided now. In regard to Washing Allowance, it is contended that paying Rs.50 per month to 52 employees would create unnecessary additional financial burden, which will add to the losses. The Management, it is stated, cannot sustain this liability. As regards holidays, it is contended that the Management is giving all the three National Holidays. The holidays of Christmas and Id-a-Milad cannot be provided as National Holidays, *inter-alia*, because there is no Muslim or Christian employee in the employment of the First Party. As regards leave with pay, it is contended that the Management is giving all paid leaves as follows:

Next day of Holi, Dasera. Half holiday for Nag Panchami. Second day of Pola. Laxmi Pujan (Diwali). Half day for Pitripaksh Amavasya. Half day for Akshay Tritia, etc.

7. It is stated that the First Party has got so many competitors in the area. In view of the competition, and the huge losses, more holidays and leaves are required to be given, that would adversely affect financially, and also on the production. So far as casual leave is concerned, for the same reason of financial burden, condition of the industry, and the competitive atmosphere, the demand is opposed. It is stated that no other factories are providing so many leaves. The demand of holidays on all Government holidays is also opposed. In regard to attendance-*cum*-wage card, it is stated that all the employees are already getting attendance-*cum*-wage card, and their leave record is also supplied to them. The First Party is prepared to supply the Identity Card to workers. Similarly, the employees are already getting E.S.I., P.F. and gratuity benefits, and therefore, nothing remains in the said demand. In regard to reinstatement of employees removed from service, the First Party has contended that not a single employee has been removed from service. The demand is vague. Such demand cannot be adjudicated before this Forum. This demand is also opposed. In regard to contractor's labour, it is stated that the contract labour is hired only as and when required. The remedy for abolition of contract system lies elsewhere, and not before the Forum. As regards insistence for employing only female employees, it is contended that the entire liquor industry elsewhere mainly employs male workers. The First Party, for the first time, has provided employment on mass scale to female employees. However, the management cannot be restrained from employing male employee if required. Such prohibition would be against the

Constitution. As far as demand of advance is concerned, the First Party has pleaded financial constrains and losses. It is stated that huge interest is required to be paid to the Bankers, from which the advance has been taken. This demand is also opposed. As regards bonus, it is stated that as on the relevant date, the provisions of payment of Bonus Act were not applicable. A loss making company, in the facts and circumstances of the case, cannot be asked to pay 20% bonus. It is stated that according to the entitlement and applicability of the Bonus Act, the statutory bonus will be paid.

8. The First Party has contended that the Second Party has failed to point out that the employees are getting all these facilities in a similarly situated factories. The First Party has referred to the fixation of minimum wages by the Committee after considering the condition of industry. It is stated that financial condition had previously forced the management to close the industry. It is further stated that the Government has incresed the licence fee by more than 300%, besides rise in excise duty. Because of the policy of the Government many liquor factories in the State have been closed down. The First Party claims to have been desperately trying to survive in such circumstances. Acceptances of all the demands will allegedly force the First Party to close the industry.

9. The issues and my findings are as follows:—

Issues

Findings

(1) Does the Second Party prove that the demands made are justified?—Yes, partly.

(2) Whether the Second Party is entitled to the reliefs as prayed for ? — Yes, partly.

(3) What award ?

—As per final award.

Award

10. The second party has examined two witnesses, and produced few documents. The First Party has also examined a witness and produced a number of documents, which do not appear to have been disputed. I have heard Mr. Lahiri and Mr. Kakani, the learned counsels.

Before examining the justifiability of each document, it would be necessary to take note of the over all evidence that has been adduced by the parties. Witness Asha examined by the Second Party, in her affidavit Exh.17, has stated about the existances of the elected representatives, giving of notice, failure in the conciliation, and then about specific demands. The affidavit indicates that the concerned employees have not been given any appointment letter, and the same should be given showing the status. Asha has referred to demands and according to her, the minimum wages were paid from August 2000 onwards, and not before, and therefore, arrears of difference of minimum wages should be paid for the period from 11th January 1999 to August 2000. All the employees are skilled workers and therefore, they should be paid the wages of skilled workers as per notification. Considering the rise in the prices, dearness allowance of 20% of the basic should be granted. In addition to dearness allowance rise of Rs.5 per point as per Consumer Price Index should be granted accordingly to variable dearness allowance. Increment of 10% of the basic should be granted. Asha further states that no employee has been provided with safety measures and uniform as per the provisions of the Factories Act. Therefore, according to Asha, provision of a pair of Sarees with Blouse piece, shoes hand-gloves, mask, raincoat, etc. is necessary. Asha further states that since no uniform is provided to the employees, and also, no washing allowance is paid, it is necessary to pay Rs.50 as washing allowance. Asha states about the demand of 20 holidays on account of religious and other occassions as per the statement of claim. She also states about the demand of 15 casual leave in a year, and also all the Government declared holiday, and in case some of them are required to work on those holidays, overtime should be paid. Asha has then stated that the employees have demanded that all female employees removed be reinstated. Then there is mention about demand of stoppage of employment of casual labourers through contractor, and in case of such requirement, only female employees should be deployed. Asha has then stated about demand of Rs. 10,000 and Rs.2,000 on account of advances. Finally, it is stated that employees have demanded bonus of 20% distributable 10 days before Diwali. This is all that is in the affidavit of first witness Asha.

11. The cross-examination of Asha indicates that the factory was closed in 1997, and at that time, all the employees were paid their terminal dues. The factory restarted in February, 1999. Asha does not know since when the minimum wages were notified for the First Party, or as to what were the minimum wages for the year 1999. She claims to have been paid Rs.30 per day. Asha was shown the Attendance-cum-wage register, which she does not dispute. Asha states that she had filed a complaint for minimum wages, but its copy is not produced. Admittedly, all the workers had to sign the register at the time of receiving wages. Admittedly, the register bears the signature of all the workers. Asha denies a suggestion that all the employees were paid minimum wages since beginning. Admittedly a chart showing the minimum wages arrears has not been produced, nor any such chart was given to Management or even to the Government Labour Officer. Asha is not able to state the actual amount due to the individual employees on account of minimum wages. Asha has admitted in clear terms that the Provident Fund benefit, Employees State Insurance benefit are made applicable to the employees. Asha does not know if all the employees are permanent, but admits that they are working uninterruptedly since 1999. Asha does not dispute that the First Party is granting leaves as per the provisions of the Factories Act. Admittedly, the employees working in Washing Section are provided shoes. Asha denies a suggestion that all the employees were provided with Apron. She admits that herself and other employees were given show cause notice by the First Party for refusing to accept the Apron. Asha has stated that she or the other employees are not prepared to accept the Apron. Asha admits on page 7 that Saree exposes workers to the risk of accident while working on machine. Asha again admits the pay register produced on record.

12. Asha admits that demand of designating as Operator to all the employees is not referred by the Government. Similarly, demand of wages of skilled employees is also not referred. Asha admits very clearly that the employees get the wages as per the notification by the Government. Admittedly, all employees are in the muster-roll. Admittedly, previously the workers/employees used to be given earned leave at the rate of one day for every 20 workings days. Asha admits that on the date of raising of the industrial dispute, provident fund deductions used to be made. On a page 9, Asha is unable to deny a suggestion that the First Party is running in losses. Asha does not dispute the Bonus Registers shown to her. She admits that bonus registers are correct. The musters are also not disputed. Asha volunteered to state that during the relevant period, the working days were shown less in the muster roll, but admittedly, no complaint was made regarding less attendance shown in the record. Asha does not know if H.R.A. becomes payable 7 years after commencement of the business as per the Act. Admittedly, the First Party started functioning in 1999. Asha admits on page 10 that no evidence is produce to show that other liquor factories pay H.R.A at 10%. Asha has admittedly not seen the accounts books of the First Party. Admittedly, D.A. is being paid as per the Minimum wages Act Notification. Asha states that employees are not prepared to take Apron, even if given now. Asha is not able to deny a suggestion that the Aprons are washed at the company's cost. Admittedly, there is no Christian or Muslim employee with the First Party. Asha admits that no document is produced to show that other factories in Vidharbha give 20 holidays, and she cannot tell the basis of claim of holidays. It is further admitted that the employees are issued Attendance Card containing the information about the wages and leave etc. Admittedly, P.F. and E.S.I. facility is provided to all the employees. Asha has admitted that Vidharbha Distillery company employs both male as well as female employees. She admits that bottling is done by machine, and the labeling is done manually.

13. The second witness Sindhu Pawar, has stated more or less on the similar lines, but emphasizing that one Surekha Navareti working since 1995 and Manoj Waghe working since 2000 have not been made permanent till date. Sindhu further states that till August 2000, the employees were paid Rs.30 per day. While taking wages, they had confirmed only total wages paid to them. It is stated that First Party manipulated wage register by showing less number of days so as to show that the payment could be shown as per minimum wages. Sindhu wants difference on account of minimum wages for the period from 19th February 1999 to July, 2000. Then on account of requirements of safety, as per Factories Act, demand of clothes, shoes, etc. has been made. These benefits are stated to have been given by one Vidarbha Distillery. Sindhu has stated about demand of holidays and casual leave, which is given in the similarly situated other industries. Finally, she has stated about advance of Rs. 2,000. Sindhu has deposed as to the certain documents, namely, the Muster-Cum-Wage Card, and settlements signed in three other industries, etc. The cross-examination of Sindhu indicates that no documentary evidence is produced to show that Manoj Waghe and Surekha Navareti are in the employment of the First Party. Sindhu also admits that dues as per full and final settlement were paid at the time of previous closure. Sindhu admits that no documentary proof is given to show that daily-wages of Rs.30 per month were paid to the employees, as stated by her. Admittedly, no complaint was made in that regard. No complaint was admittedly made to the Management about manipulation in the wage register. Admittedly, the place of work is fully covered by Shed. Sindhu does not know legal provisions about rain-coat. Admittedly, balance-sheets or other evidence of income in respect of Vidarbha Distillery, Rainbow Distillery, and Nagpur Distillery have not been produced. Sindhu admits that Balance-sheets of three other companies, relied on by the Second Party, have not been compared with the Balance-sheets of the First Party.

14. The First Party has examined its Factory Manager, Shri Shinde. Shinde's affidavit Exh.32 indicates that the First Party produces Country Liquor. The First Party was closed in 1997 when the dues of the employees were paid. It restarted in February, 1999. The Board of Directors has a paid-up capital of over Rs.22 Lakhs, and they have invested additional over Rs.26 lakhs. It is stated that because of the financial conditions, the directors and share holders have not been paid dividend. Even the interest amount has not been paid by the company. The financial condition is not good, and therefore, the company is not able to shoulder any additional burden. According to the witness, from February, 1999 all the employees have been paid according to minimum wages notification. All those employees who have worked for 240 days are treated as permanent employees. All the employees have been given facilities of P.F and E.S.I., and the management is making its contribution regularly on that count. Bonus is also paid. The witness has stated about the Attendance-cum-Wage register produced on record, which are correct, and it bears signature of all the employees. The wages as notified, were paid in that register since the beginning. All these employees are unskilled workers. The witness has explained the manufacturing process of liquor in detail on page Nos. 4 to 6. According to the witness, the work, which is performed by the employees concerned, is of unskilled nature. No skilled employee is required in the process. No training is required for performing the said work.

15. The witness of the First Party has further stated that factory comes under Zone-II of the Minimum Wage Notification, and accordingly, the wages are being paid along with the dearness allowance. The witness has given the financial statistics regarding performance of the company since 1998 till 2004, and according to him, mostly, the First Party has been running into losses. In view of the continuing losses, according to the witness, the First Party is not able to grant any of the benefits. The evidence indicates that 90% of the industries manufacturing liquor are running

in losses, and the First Party some how prolonging the decision of closure. The witness has denied each and every demand and sought to give reason for inability to fulfil the demands or lack of justification in the said demand. In regard to uniform and safety equipment it is stated that the First Party is providing safety equipments to workers in accordance with the Factories Act in the sections where it is required. Aprons were provided to the employees as per the direction of the Factory Inspector, but only few employees accepted the Aprons, and the remaining refused to do so. It is stated that the management cannot provide Sarees and Blouse as uniform because it is risky, and the Factory Inspector does not permit the said uniform. Safety shoes have been provided to workers working in the Washing Section. Since the manufacturing activities are carried on in a close shed, there is no need for a rain-coat. Hand-gloves cannot provided because after wearing hand-gloves, if one tries to lift the bottle from the Conveyor Belt, there is possibility of the bottle slipping down. As to washing allowance, the witness had stated that the Aprons/Over-coat provided by the Company are washed at the company's cost once in a week.

16. The witness has further stated about various holidays and leaves allowed by the First Party. The details in that regard are on page 9 to 11 of the affidavit. It is stated that bottling units of Indian made foreign liquor cannot be compared with the First Party. The management cannot afford to give more holidays, in view of the losses, and also since the employees of the First Party are giving less production, than the workers in the other factories, which are sought to be compared. The demand of casual leave is also opposed, stating that it would add to the losses substantially forcing the closure. It is stated that because of the restrictions of the Excise Department and Factories Department, the First Party cannot afford to pay workers the overtime. The grant of casual leaves as such, will result in substantial loss in production, and consequent financial losses. The witness stated that the management is also declaring holidays in accordance with the guidelines of the Election Commission. The management cannot accept the demand of Government Holidays.

17. It is further stated that the First Party has not removed any employee, and therefore, there is no question of reinstatement of anybody. As regards contract labour, it is stated that whenever required the contract labour is engaged with prior permission of the authorities under the contract Labour (Regulation and Abolition) Act, and the said right of the management cannot be taken away. The witness has stated further that depending upon the availability of the funds, and looking to the need of an individual worker, an advance of Rs. 2,000 to 5,000 is given to the employees without any interest, and the same is recovered in equal monthly instalments. The witness has specifically stated that the First Party has taken loans from the various financial institutions, and is required to pay interest. Therefore, the demand of an advance cannot be fulfilled. According to the witness, bonus is being paid before Diwali. The witness admits that the Payment of Bonus Act is applicable. However, the claim of 20% bonus is opposed on account of continuing losses. The witness has further stated that the settlements or agreements of other industries produced on record cannot be made applicable to the First Party because those other companies are running in Profit, whereas the First Party is running in losses. It is stated that the First Party does not have as wide market as available to those liquor manufacturing concerns. Similarly, the overheads of those factories are also less. The production of those factories is also stated to be more. Finally the witness has stated that because of the financial constraints, no demand can be fulfilled, and the situation is such that the management is merely prolonging the decision of closure with the expectation of making profit in future. The witness has proved the document, like Balance-sheet signed by the Director of the First Party and the Chartered Accountant. The original Balance-sheets were also brought in Court.

18. In cross-examination, the witness of the First Party maintains that financial condition of the First Party is bad since 1999. Competition and lack of demand are stated to be main reasons for loss. Bonus is being paid to the employee since the year 2003. Admittedly, letters of permanency as such are not issued by the company. The witness was asked that Surekha Navareti and Manoj Waghe have not been made permanent even today. The witness answered that their names were not on the roll in 1999, and they are not in the reference. They were not in the employment at the time of reference. The witness states that Attendance-cum-Wage cards were issued since 1999. The witness admits reports of the Government Labour Officer at Exh.35-A. At Sr. No.60 of the said report is the name of Surekha Navareti.

19. The witness clarifies in further cross-examination that in March, 1999 also there was no regular running of the factory. It took 5 to 6 months for the factory to run regularly. The witness admits that the muster-rolls show work of not more than 15 days in a month till July, 1999. The witness denies a suggestion that the First Party has deliberately shown less working days in the muster roll to show that the payment was made as per minimum wages. Witness denies that loss making companies are giving full payment. The witness clarifies that Nagpur Distillery, Rainbow Distillery and Vidarbha Distillery are old companies. Nagpur Distillery produces country as well as foregin liquor. Vidharbha Distillery also produces both types of liquor. Rainbow Distillery produces only foreign liquor. The witness has further stated that Saree can get caught up in the Conveyor Belt, through there was no accident as such, but on 2 to 3 occassions Sarees were caught in Conveyor Belt.

20. The First Party's witness has then stated that there is no need for hand-gloves. Rainbow and Nagpur Distilleries make high quality foreign liquors and chemicals (coloured) are used, and hence hand-gloves are provided. Admittedly, the Factory Inspector did not prohibit provisions of hand-gloves. The witness further states that loans were given to the employees whenever needed upto Rs.5,000 Finally, the witness denies a suggestion that financial condition of the First Party and three companies, sought to be compared, is similar.

21. Exh.25-B is the notification dated 1st November 1999 of minimum wages. Exh.25-A collectively are the Attendance-cum-wage Card of some workers concerned, are produced by the Second Party. The cards indicate various details, like date of entry in service, designation, minimum wage, actual wage, etc. On all the cards, the designation of the concerned employee is shown as Labour. Exh.25-C is the copy of an agreement between Rainbow Distillery and the elected representatives of the workers in that Factory. The agreement was signed on 17th July 2003. By the said agreement, the employees were extended certain basic pay and allowances, special allowance, bonus as per the Act, festival advance of Rs.500, certain festivals leaves, uniform to male employees and sandals to wear, and eight casual leaves. Perusal of the agreement, however, makes it clear that the employer had decided to introduce new brand of liquor, and the employees had undertaken to give specific additional production, as mentioned in the agreement. It is also provided that in case the employees failed to give targeted production, their wages would be reduced. The delay in reporting and starting the duties would also result in reduction of wages. Thus there is a reciprocal give and take from both the sides.

22. The Exh-25-D is copy of settlement between Nagpur Distillery and the workers' elected representatives. The settlement was signed on 11th October 2002. By this settlement, the employees were granted H.R.A. as per the Act, leave wages according to the factories Act, casual leave of 6 days in a year on certain conditions, about 20 leaves including half day leave, two sets of uniform and shoes, festival advance of Rs. 6,000 once in a year , etc. In the mutual agreement, the workers of the said company had undertaken the responsibility of managing the absentism, and to give minimum targeted production in terms of the agreement. The settlement provides that if

the workers failed to give minimum targeted production, the wages payable would be proportionate to the actual production. Thus there was an agreement of deduction of wages in proportion to the reduction in production. The settlement indicates that about 75 male employees were in the employment of the said company. The second party has produced a copy of settlement between Vidharbha Distillery and the elected representatives, and the copy is Art.A, but it as not been exhibited.

23. The Exh.35-A is the xerox copy of the inspection Note of the Government Labour Officer, who had visited the first party company. At Sr. No.60 of the third page of annexure to the Note, is the name of Surekha. The total service period of Surekha is shown as three months. This document has been produced to show that Surekha has been in employment of the First Party. The Note, however, indicates that the inspection was taken in August 1997. It is clear that the inspection was prior to the closure of the industry. The Industry was closed by paying all the terminal dues, and thereafter, it was reopened in February 1999. Whether Surekha was in employment in February 1999 is important. The document Exh.35-A is, therefore, not very relevant. Exh.31-A to 31-G are the copies of the Balance-sheets, Profit and Loss Accounts, and the related documents. The record is from 1999 till 2005. The originals, it appears, were also brought for comparison. There is no effective cross-examination on these documents. The documents have not been specifically denied or disputed. All these documents relating to account books of the First Party indicate that mostly, the First Party is running in losses. Exh.32 is the letter dated 10th January 2002 given by the First Party to the Assistant Commissioner of Labour, Nagpur informing that all the employees were given overcoat, but only some have accepted the overcoat, and the other refused. Those who refused to accept the overcoat, were given show cause notice. Exh.21-B is the show cause notice dated 3rd January 2002 issued by the First Party to the employees, namely, Asha Nagapure, asking her to show cause why she refused to accept the uniform. The First Party appears to have produced number of other documents, which, however, have not been exhibited.

24. Exh.21-A collectively is the copy of bonus register for the year ending March 2003, indicating clearly that the employees were paid certain amount on account of bonus. Exh.20-A is the copy of muster-cum-wage register for February 1999. The details about days of work, minimum wages payable, and the actual wages paid according to the working days are shown in this document. Like that muster rolls for the period upto November 2000 appear to have been produced by the First Party. All these documents have been inspected by the witness of the Second Party. The witness of the First Party has deposed as to these documents.

25. Mr. Lahiri, the Learned counsel submitted that minimum wages arrears for the period from February 1999 to August 2000 are required to be paid because the payment was not done at the notified rates during that period. The First Party had shown less number of working days with an object to show that the payment was made at the notified rates. It was argued that Surekha and Manoj are in the employment like other employees, and therefore all the employees, including Surekha and Manoj are entitled to Permanency. The employees are paid bare minimum wages, and therefore, the demand for two Sarees and blouse as well as shoes is quite justifiable. It was further submitted that the holidays given to the employees are inadequate compared to the other similarly situated liquor industries, and therefore, holidays as claimed should be granted. The learned counsel submitted that the employees are fully justified in demanding loan/advance for marriage, festivals, and the like purposes. The interest free loan could be made repayable in equal monthly installments. The learned counsel pointed out Exh.35-A, and an admission given about it by the witness in Exh.32. Mr. Lahiri had submitted that First Party had manipulated the Muster Rolls of 1999-2000. Mr. Lahiri also referred to the evidence of witness Sindhu in para 3 of her affidavit Exh.26. Finally, Mr. Lahiri also claimed 20 holidays as mentioned in the statement of claim.

26. Mr. Kakani, the learned counsel for the First Party argued that financial condition of the industry is to be seen, and it is also required to be examined whether the comparable industries are having the same financial condition and status. The First Party is continuously running in losses. The marginal profit earned in one or two years some time back was exhausted in making up the previous losses. Thereafter, the industry is in continuous loss. The industry of country liquor has limited market. The production is also limited. The two or three industries sought to be compared by the Second Party, produce country as well as foreign liquor. All those three industries are running in profit. The production activities /process is different in those industries. In the settlements relied upon by the second party, the workers had undertaken to give increased targeted production, and had agreed for reduction of wages proportionately, if the production is reduced. Mr. Kakani further submitted that muster registers and Bonus registers are produced. The Muster registers are undisputed, and they show that the employees were paid as per minimum rates of wages from February 1999, when the industry restarted. The allegation that there was manipulation of muster-rolls is not true. If there was manipulation, then ordinarily the employee would have complained about it, and no such complaint was made either to the Government Labour Officer, or to the management. The learned counsel submitted that wage cards were issued since the beginning. The wage cards are always in possession of the employees, after the particular working period is over. Therefore, the management cannot be expected to produce wage cards. Surekha and Manoj for whom permanency is now claimed, are stated to be not in employment of the First Party/ Company. No such demand has been referred by the Government.

27. Mr. Kakani further argued that bottle cleaning, bottle filling, and bottle sealing, all these works are done mechanically. The employees are only deployed to lift the bottle from the Conveyor Belt, paste a ready made label on the bottle, and put them in the crate. All the employees are performing unskilled job. They are paid the rates prescribed for an unskilled labour of liquor industry from day one. Bonus is also being paid as per the Act. As regards H.R.A., the learned counsel argued that Rent Enactment is not applicable to the industry, and therefore, the same is not paid. Gratuity, P.F., and E.S.I benefits have already been made applicable. The learned counsel submitted that in general, the condition of liquor industry is very bad. There is no margin of profit. Taxation is heavy. Out of 18 to 19 liquor industries about 7 to 8 are running and rest are closed. The three industries sought to be compared by the second party are not only manufacturing country as well as foreign liquor, but their production levels are very high. Mr. Kakani submitted that the second party has not shown the justification of the demands. The Second Party ought to have proved that the working as well as financial condition of the First Party, and the other industries is similar. That has not been done. Mr. Kakani has prayed for rejection of the demands.

28. Having considered all the aspects of the matter, I find that the First Party/ Company has not been doing well financially, and it has sustained losses practically continuously. The profit shown in one or two years got exhausted in making up the earlier losses, and in subsequent years the losses continued. The oral as well as documentary evidence on the financial condition of the First Party has remained totally unshaken. In fact, the witness of the Second Party is not able to deny a suggestion that the First Party is running in losses. Having regard to the evidence brought on record, I find that the First Party, which was once closed in the year 1997 is not a profit making company as such.

29. The main thrust of the argument of Mr. Lahiri was on the permanency, holidays, arrears of minimum wages, leaves and provision of Sarees. The main evidence in support of all the demands is the two settlements Exh.25-C and 25-D. The third settlement Art-A has not been exhibited, and therefore, cannot be taken into consideration. As I said above, the two settlements Exh.25-C and

25-D have been signed by the companies, which are producing country as well as foreign liquor. The evidence indicates that they are old companies. Their settlements indicates that certain benefits were given to the employees after mutual negotiations. The important feature of the settlement is that the workers had agreed to give increased targeted productions. The settlements provide for reduction of wages proportionately, if the production is reduced. The contention of the First Party is that those industries are profit making industries. Those two or three industries cannot be compared with the First Party. Apart from the settlements, in the oral evidence of the two witnesses examined by the Second Party, no justification as such has been shown in support of the demands. The evidence of the two witnesses also does not indicates that the First Party is financially capable of bearing the burden of additional liability that would be created, if the demands are allowed. In my view, therefore, all the 18 demands, as made, cannot be said to have been justified.

30. The first demand is of grant of permanency and extension of all statutory benefits. This demand is quite reasonable. The evidence indicates that the female employees are working virtually continuously since, 1999. The Model Standing Orders require grant of permanency after completion of 240 days. The First Party is, therefore, under an obligation to regularise the services of the employees, and pay them all statutory benefits. In this respect, for the first time, the witness Sindhu in her evidence stated that Surekha Navareti and Manoj Waghe are working with the First Party respectively since 1995 and 2000, but they have not been made permanent till date. Now, admittedly, no documentary evidence is produced to show that Surekha and Manoj are in the employment of the First Party. This has been admitted by Sindhu in her cross-examination. The First Party's oral evidence indicates that Manoj and Surekha were not in employment after reopening of the factory in 1999. Exh. 35-A the Inspection Note of the Government Labour Officer only indicates that in August, 1997 Surekha was on the roll, but had worked for three months only. After August, 1997, the factory was closed. In view of the admission given by Sindhu, and the other evidence on record, the claim of permanency for Surekha and Manoj has not been proved. In the reference order, there is no specific mention of the claim of permanency for Surekha And Manoj. In all probabilities, Surekha and Manoj were not in employment, when the demand was raised, or dispute was raised, and if that be so, then there is no reason for grant of permanency to Surekha and Manoj. That claim has to be rejected.

31. Coming to the claim of arrears of minimum wages, the reference order indicates that the dispute referred is demand of minimum wages, including the arrears. In support of this demand, witness Sindhu has stated that the minimum wages for 1999 to August, 2000 were not paid, and the wage registers were manipulated by showing less number of days. The object was to show that whatever the number of days of work, the payment was made as per the minimum wages. Now, there is no pleading in the statement of claim, either about the claim of arrears of the particular period, much less about the manipulation in the record. The witness of the First Party has stated that from day one, i.e, after reopening in February, 1999, whatever payment was made, was as per the minimum wages. The evidence indicates that for some time in the year 1999, the factory used not to run for all the days in a month. The employees, therefore, could not get the wages for the full month. but whatever wages were paid, they were according to the minimum wages, and for the work performed. The undisputed muster rolls do not in any way justify a conclusion that the record was manipulated in any manner. Then the evidence indicates that the concerned employees never complained, either to management or to the Government Labour Officer, that they were not paid minimum wages for the initial period, or that the number of working days shown in the muster roll were less. Considering the evidence on record, I find that the employees have been paid the notified minimum wages since the beginning, and therefore, no arrears as such are payable.

32. The next demand is about pay-scale, 20% Dearness allowance, and revision of D.A. periodically by Rs.5 per point as per Consumer Price Index of industrial employees with base year (1982=100). In regard to these demands, I find that admittedly minimum wages and dearness allowance notified by the State Government from time to time is paid. Fixation of pay or any rise in D.A., over and above the notified D.A. would result in substantial financial implications, and consequent loss. Considering the financial condition of the First Party, it would not be justified to grant this claim. If the First Party is forced to pay such monetary claim disregarding its capacity, the net result would be against the interest of the employees. I say so because of the contention and evidence that First Party has been Prolonging the decision of closure only with a hope to making the industry profitable, but otherwise, the industry is running in losses. If the additional burden is cast, and if the employer is unable to bear the said burden, the First Party may opt for closure as indicated. In that event, the concerned employees would be the loser. For all these reasons, the demand of increment of 10% in the basic pay is also not justified. Now, the second party has claimed House Rent Allowance at the rate of 10% of the basic. The two industries relied upon by the Second Party are not comparable. The conditions in the industry of First Party are different. This claim is also not justified. However, there is a statute of minimum house rent allowance, called, Maharashtra Minimum House Rent Allowance Act. The First Party is under obligation to pay H.R.A. as provided in the said statute. The First Party shall, therefore, pay to all the concerned employees the H.R.A. as per the provisions of the said Act.

33. The next demand is of pair of Sarees and Blouse, as well as safety shoes. The evidence indicates that Sarees are risky considering the situation in which the employees are required to work. In this respect, there is evidence led by the First Party. I would, however make a specific reference to the admission given by the witness Asha, examined by the Second Party. Asha has admitted that Sarees expose workers to the risk of accident while working on machine. The evidence indicates that Factory Inspector had advised the First Party to provide Apron or Overcoat to the employees. Accordingly, the Aprons or Overcoat were offered to all the employees, but only few accepted the same. The witness of the Second Party has stated in evidence that the employees are not prepared to accept Apron, even now. As regards safety shoes, there is evidence that the shoes are provided to the employees in a particular section or place where they were required. The demand No.8 regarding Sarees and Shoes is therefore, not justified. Non-payment of Washing Allowance is out of question since the demand of Sarees is found to be unjustified. The evidence indicates that the Aprons are washed once in a week at the cost of the Company.

34. The next demand is about holidays, festival holidays, national holidays, and casual leave as well as Government holidays. Since the two settlements are of uncomparable industries, the provisions in those agreements relating to the holidays and leaves would not be relevant in the present case. The evidence discussed above indicates that the First Party employs about 52 employees. The First Party has declared certain holidays, and the witness of the Second Party has not disputed that annual leave with wages is being provided as per the provisions of the Factories Act. The number of holidays and casual leaves if granted would result in reduction of production on those days, unless substitutes are employed. The holidays straight-way would have adverse impact on the production, and turn over as well as the revenue. The leaves also indirectly cause the financial burden. More the leaves, more the requirement to engage, either contract labour or substitutes. This involves time, expenditure of wages, and other service conditions of those, who are engaged. If the alternate appointment is not made, there would be production loss, which also would be detrimental to the interest of the industry. Considering the statutory leave and holidays already given, I find no justification in granting the claim. No such justification has been shown in the evidence of two witnesses examined by the Second Party. The claim that in addition to the festivals and other holidays, all Government holidays of State Government as well as Central

Government should be made applicable or in the alternative, on those days over time or alternate compensatory off should be given, is totally unreasonable and unjustified. This demand is baseless, and the First Party, which is not able to run successfully and economically, cannot be forced to extend this kind of benefit.

35. The next demand is of attendance cards, wage, cards leave cards and identity card. The evidence on record, which I have discussed above, indicates that attendance card containing information about wages and leave is already being given to the employees. The contention that such card is being given since the year 2000 has not been substantiated. Even if it is presumed that such cards are being issued only since the year 2000, the fact remains that the demand has been fulfilled. No fruitful purpose would be served by directing the First Party to prepare the cards for the year 1999, and issue them now. The demand of Identity Card is reasonable, and the First Party appears to be prepared to issue such Cards if required. Coming to the next demand of Employees State Insurance Scheme and the Provident Fund, the evidence indicates that both these benefits are already made applicable to the employees. The witness of the Second Party has admitted this fact. This demand is, therefore, already fulfilled.

36. The next demand is for reinstatement of female workers, who were removed from service. In this respect, I do not find any evidence, worth the name, in support of this demand. There is no pleading or evidence that a particular female employee was removed from service prior to the date of charter of demands. There is no evidence of the total service period of such employees the names of such ex-employees are also not disclosed. This demand is, therefore, ill founded. The next demand is abolition of contract labour system for the work, which is available perennially. In the statement of claim, the pleading in regard to this demand is at Sr. No.14 on page 3. The Second Party has stated that employing casual labours through contractor to do work of perennial nature should be stopped. There is discrepancy in the demand No.14 in the reference order, and the pleadings thereof in the statement of claim. There is no cogent evidence to show that contract labour is hired routinely, much less to do work of permanent nature. The evidence indicates that whatever contract labour is hired, it is with of the permission of the authorities concerned. For abolition of such contract system, the remedy is in the provisions of the contract Labour (Regulation and Abolition) Act. It cannot be a subject matter of this reference.

37. The next demand is, if in regard to production activities the contract labour is required, only female employee should be recruited. This demand is also baseless. There cannot be discrimination between male and female. The evidence indicates that atleast in one other liquor industry both male as well as female employees work. The Second Party has not contended that the employment of male employee would inconvenience or embarrass the female employees. It appears that on the Belt or Section where female employees are working, no male employee is made to work at any time. Thus this is the look out of the contractor, and it also depends upon the nature of contract work, that is available. In my view, insistence on this demand is also unresonable. The Second Party has claimed advance of Rs.10,000 on account of marriage and construction of house without any interest, and its repayment in 100 equal monthly instalments. The next claim is for festivals advance of Rs.2,000 with repayment of 100 monthly equal instalments. In regard to this demand, first the second party has only made the demand, Barring the two incomparable settlements, no justification has been given by the witnesses in support of this demand. The evidence indicates that the First Party has taken huge finance and is required to pay interest. Considering the financial condition, It would not be proper to make it mandatory to sanction the advances as claimed every time the demand is made. The First Party has contended, and its witness has stated that the First Party already gives loan to the needy, upto Rs.5,000. This shows that loan advances upto Rs. 5,000 are given. The First Party accordingly shall consider the request for advances as per the present practice, as and when the occasion arises.

38. The last demand in the Statement of claim is of bonus/*ex-gratia* of 20% to be distributed 10 days before Diwali. The evidence indicates that bonus is being paid from last about 3 to 4 years at the statutory rate. When the pay increment or even additional D.A. is not found to be justified, it would be unreasonable to direct the First Party to pay 20% bonus. Considering the facts and circumstances of the case, and the financial condition of the industry, payment of statutory bonus is adequate. The employees may make claim, and the employer may consider grant of higher bonus, if and when the industry becomes profit making unit. In the statement of claim, there is no pleading about hand-gloves, masks and rain-coat as safety equipments, as claimed in the evidence of the witness Sindhu. This claim is also not in the reference order, and therefore, cannot be considered. The witness Asha in affidavit Exh.17 has stated that the female employees are operators, and they are required to be treated as skilled worker, and paid the wages of skilled worker. This is not the demand in the reference order. This is also not pleaded in the statement of claim. The evidence, including the muster cards Exh.25-A produced by the second party indicates that all the concerned employees are unskilled labours, and are working as such. Therefore, the demand for treating the employees as skilled employees cannot be considered or granted.

39. To sum up, all the employees, who are on roll as on today and who have been working all these years, are entitled to be regularized in service by granting them permanency in the post of unskilled labourers. The claim for permanency for Surekha Navareti and Manoj Waghe cannot be granted. Further, the First Party shall continue to provide to the concerned employees, the statutory benefits of E.S.I. and Provident fund, Gratuity, etc., including the statutory H.R.A. Hence the following award:—

AWARD

(1) The First Party/ Company shall regularize the services of the concerned employees in the post of unskilled labourer as stated in para 39 here-in-above.

(2) The First Party shall continue to provide to the concerned employees the statutory benefits of E.S.I., P.F., gratuity and bonus, etc., and the First Party shall ensure that the earned leaves/ holidays allowed to the concerned employees are not less than what is statutorily required.

(3) The First Party/ Company shall pay to the concerned employee the House Rent Allowance as per the provisions of the Maharashtra Minimum House Rent Allowance Act.

(4) Rest of the claims are rejected.

(5) No order as to costs.

Nagpur,
dated 5th March 2007.

D. H. DESHMUKH,
Member,
Industrial Court, Nagpur.

Additional Commissioner of Labour,
Nagpur.

OFFICE OF THE ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Civil Lines, Nagpur, dated the 5th February 2008

NOTIFICATION

No. ALC/ADJ/PUB/ IT/ NAG/1 /08.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947) read with Government Notification, Industry, Energy and Labour Department No. IDA-2002/ 5686/ (2882) Lab-3, dated 19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the Enclosed Award of the Industrial Court Nagpur referred for adjudication by the Additional Commissioner of Labour, Nagpur in reference IT/6/05, in the Industrial Dispute between M/s. Space Wood Furniture Pvt. Ltd., M.I.D.C. Nagpur. And The President, Vidharbha General Kamgar Union Wanadongari Nagpur.

BEFORE SMT. N. V. BHAIID, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL, NAGPUR

REFERENCE (IT) No.6 OF 2005.—Adjudication Between M/s. Space Wood Furnitures Pvt. Ltd., N-6, M.I.D.C, Industrial Area, Hingna Road, Nagpur.—*Party No.1—And—* The president Vidharbha General Kamgar Union, C/o. Bridkishor Mourya, Rajivnagar, Post Wanadongri, Hingna, Nagpur.—*Party No.2.*

IN THE MATTER OF REFERENCE UNDER SECTION 10(1)
READ WITH SECTION 12(5) OF INDUSTRIAL DISPUTES ACT, 1947.

Apperances.— Shri S. S. Ghate, Advocate for Party No. 1,
None present for *Party No.2.*

Award

(Passed on this 20th day of November 2007)

The Additional Commissioner of Labour, Nagpur, as per his letter dated 14th July 2005 has forwarded this Reference to this Tribunal under section 10(1) of the Industrial Disputes Act, 1947, for adjudication of an industrial dispute between the M/s. Space Wood Furnitures Pvt. Ltd. and the President, Vidharbha General Kamgar Union, over the demands set out in the Schedule below the reference order.

2. On receipt of the reference notices were issued to both parties. In pursuance to the notices, both the parties put their appearance. But, the record reveals that despites repeated chances given, the party No.2 failed to submit their statement of claim in justification of the demands. As no demand put forth before this Tribunal by the party No.2, there remains nothing to enquire about the alleged dispute between the party No.1 and party No.2, In the circumstance, I left with no other alternative but to answer the Reference in negative, for want of statement of claim. Hence, the Award.

Award

The Reference is answered in negative.

The record of conciliation proceedings be sent back to the Additional Commissioner of Labour, Nagpur with the copy of this Award.

Nagpur,
dated 20th November 2007.

N. V. BHAIID,
Presiding Officer,
Industrial Tribunal, Nagpur.

Additional Commissioner of Labour,
Nagpur.

OFFICE OF THE ADDITIONAL COMMISSIONER OF LABOUR, NAGPUR

Civil Lines, Nagpur, dated the 21st April 2008

NOTIFICATION

No. ALC/ADJ/PUB/IT/NAG/9/08.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947) read with Government Notification, Industry, Energy and Labour Department No. IDA 2002/ 5686/ (2882) Lab-3, dated 19th August 2003. The Additional Commissioner of Labour, Nagpur hereby publishes the Enclosed Award of the Industrial Court, Nagpur referred for adjudication by the Additional Commissioner of Labour, Nagpur in reference IT/2/1989 in the Industrial Dispute between M/s. Nav-Bharat Hindi Dainik Cotton Market, Nagpur And Workmen employed under them.

BEFORE THE INDUSTRIAL TRIBUNAL, NAGPUR
PRESIDED BY SHRI M.P. KUKDAY, B.COM., LL.B

REFERENCE (IT) No.2 OF 1989.—Adjudication Between Nav-Bharat Hindi Dainik, Cotton Market, Nagpur.—*Party No.1. And Workmen employed under them.—Party No.2.*

IN THE MATTER OF REFERENCE UNDER SECTION 10(1)(d)
READ WITH SECTION 12(5) OF THE INDUSTRIAL DISPUTES ACT, 1947

Appearances.—Mr. A. R. Atrey, Advocate for Party No.1.
Mr. S.D. Thakur, Advocate for Party No.2.

Award

(Passed on 21st February 2008)

1. The Parties to the Reference could not reconcile their dispute on account of payment of bonus. The Party No. 1 is Nav-Bharat Hindi Daily, Nagpur and Party No. 2 is Workmen represented by Nav-Bharat Shramik Sangh, Nagpur. The Party No.2 therefore raised a dispute before the Conciliation Officer for awarding bonus @ 20 per cent. for the year 1987-1988. The matter could not be settled therefore, Conciliation Officer submitted failure report in the said conciliation proceedings to the Government. The Government of Maharashtra, Industries, Energy and Labour Department has made a Reference to the Industrial Tribunal (Bench at Nagpur) then presided over by Shri D. U. Khan *vide* order dated 28th June 1989. The Reference is made as per schedule “20 per cent. Bonus for the accounting year 1987-1988 8.33 per cent. bonus accepted by the employees under protest, remaining 11.67 per. cent. Bonus for the accounting year 1987-1988 be paid to the employees.”

2. Similarly Reference (IT) No.1/84, 2/84, 8/85, 1/88, 3/89 and 22/97 between the same parties for the demand of bonus for the period mentioned in the above Reference were made by the Government of Maharashtra to the Industrial Tribunal, Nagpur. All these References appears to have been allotted for disposal to the Presiding Officer named therein. Ultimately all these References were allotted before the Presiding Officer, Industrial Tribunal, Nagpur then presided over by Shri A.S. Shivankar. The Party No.2 moved an application Exh.9 (in Reference IT No.8/ 85) for direction to be issued to Party No.1 to produce the balance-sheet on record. The prayer clause reads as before :—

“It is, therefore, prayed that in the interest of justice and for just and proper determination of the case, the Party No.1 be directed to place on record consolidated Balance Sheets of all the Editions of the Party No.1 Newspaper Establishment for and for the years 1979 upto date for expeditious disposal of the reference.”

The Party No.1 has filed its reply *vide* Exh.12 (in Reference IT No.8/85) to application Exh.9 disputing the contents in the application with an ultimate submission of dismissal of the application.

3. It appears that Party No.1 prior to 1st January 1983 was publishing newspapers from Nagpur, Raipur, Jabalpur, Bhopal and Indore. The partnership was dissolved on 31st December 1982. Thereafter separate partnership firms were constituted at Nagpur, Raipur and Jabalpur as well a proprietary firm at Bhopal under the independent rights of publication is publishing Nav-Bharat. New independent existence of partnership w.e.f. 1st January 1983 are registered as independent firms by their partners at Nagpur (State of Maharashtra), Raipur (State of Chattisgarh), Jabalpur, Bhopal and Indore (State of Madhya Pradesh). Nav-Bharat Press (Nagpur) having its office at Wardha Road, Nagpur has become a separate and independent entity.

4. The Party No.2 is a Union since before the alleged separation in 1983. Prior to 1983 there used to be a consolidated balance-sheet having its head office at Nagpur for all the places above mentioned. Various awards were implemented by making classification of Party No.1 and accordingly pay fixation of the employees also came to be made. The Party No.2 therefore moved an application Exh.9 (Reference IT No.8/85) for the years under Reference (IT) No. 1/84, 2/84, 1/88, 2/89, 3/89 & 22/97 for directions to Party No.1 to file a consolidated Balance-sheets. The Party No.2 has moved identical application of Exh.9 in Reference (IT) No.8/85 in the respective Reference (IT) No.1/84, 2/84, 1/88, 2/89, 3/89 and 22/97 for direction to produce the consolidated balance-sheet of the publication at various places named above as it was done earlier to 1983 i.e. before the alleged separation of establishments.

5. The learned the then Presiding Officer has passed common order dated 8th January 2001 below Exh.9 in References (IT) No.8/85 and the others References pending for decision before him directing to produce the consolidated balance sheet from the year 1979 onwards. The order reads as before :—

“The Party No.1 is hereby given one more chance to produce the consolidated balance-sheet as asked for by the party No.2. The Party No.1 may file the consolidated balance-sheet for and from the year 1979 onwards on or before the next date. Failing which the party No.2 shall be entitled and competent to adduce evidence with respect to the consolidated balance-sheet.”

6. The Party No.2 then moved an application on 29th July 2002 in Reference (IT) No.8/85 *vide* Exh.17 for consolidation of Reference (IT) Nos.1/84, 2/84, 8/85, 1/88, 2/89, 3/89 and 22/97. The then Presiding Officer upon hearing the Parties passed an order dated 21st March 2003 allowing the application with the directions to Party No.2 to file consolidated statement of claim in all these References positively on or before 30th April 2003. The order reads as before :—

“It is hereby ordered that the Ref. Nos. 1/84, 2/84, 8/85, 1/88, 2/89 and 3/89 are hereby consolidated and the party No.2 is directed to file consolidated statement of claim in all these references positively on or before 30th April 2003. Party No.2 failure to submit the statement of claim on or before 30th April 2003 will compell this Court to answer the references in negative. Party No.2 is specifically warned that date for submission of statement of claims shall not be extended.”

7. The Party No. 2 moved an application Exh.24 (Reference IT No.8/85) for direction to Party No.1 to supply the information required under the provisions of Payment of Bonus Act. The Prayer clause reads as before :—

“It is, therefore, prayed that in the interest of justic the Party No.1 be directed to provide the information as asked for by the Chartered Accountant of the Union through his communication dated 22nd December 2002 accordingly.

Pass such other order, direction or relief his Hon'ble Tribunal deems fit and proper.”

The communication date 22nd December 2002 of Chartered Accountant S.V.Ramana reads as before :—

“The following information is required to finalise the amount of set on the set off of allocable surplus under section 15 of the payment of Bonus Act, 1965.—

(a) Computation of total income for the year ended 31st December 1979, 31st March 1981, (31st March 1981) 31st March 1981 for determining the depreciation claimed under the income Tax Act, 1961, since the same has to be deducted in Form No. A of the Payment of Bonus Rules, 1975.

(b) Amount of income firm income tax payable for each year since the same is deductible in Form No. A of the Payment of Bonus Rules, 1975.

(c) Year wise details of set on and set off as at the commencement of financial year ended 31st December 1979 for the determining the adjustments required under section 15 of the payment of Bonus Act, 1965.

(d) Also confirm whether M.P. chronicle Bhopal and Raipur form part Nav Bharat Press or is a separate firm for the purpose of income tax.

Please furnish the aforesaid information for determining the set on and set off position under the Payment of Bonus Act, 1965 since the same cannot be computed otherwise.”

The reply was filed at Exh.26 raising the objection to the consolidation of References, however the application Exh.17 was allowed. The order reads as before:—

“It is hereby ordered that the Ref. Nos. 1/84, 2/84, 8/85, 1/88, 2/89 and 3/89 are hereby consolidated and the party No.2 is directed to file consolidated statement of claim in all these references positively on or before 30th April 2003. Party No.2's failure submit the statements of claim on or before 30th April 2003 will compel this Court to answer the references in negative. Party No. 2 is specifically warned that date for submission of statement of claim shall not be extended.”

8. The Party No. 2 has submitted the statement of claim in Reference (IT) No.8/85 and copies of the same are placed under other References consolidated with Reference (IT) No.8/85, *vide* Exh.35. The permission to file written statement was allowed *vide* Exh.38 and the Party No.1 has filed its written statement *vide* Exh.39. The Party No. 2 has led the common evidence on affidavit *vide* Exh.45 and has closed the evidence *vide* pursis Exh.51. The Party No. 1 has filed a pursis of not leading any oral evidence *vide* Exh.56 in all the Reference including Reference No.8/85.

9. The learned counsel for the Party No. 2, Shri S. D. Thakur made a submission that Party No.1 is not co-operating the court for resolving the dispute under Reference. The submission of learned counsel for the Party No.2 is the Party No.1 Nav-Bharat Hindi Daily at Nagpur though was making publication from various places the consoliated balance-sheet was being prepared at

the main Branch at Nagpur. The balance sheet was exhibiting the gross profit and the audited report is to exhibit the available surplus for distribution of bonus. The Party No.1 is neither producing the consolidated balance sheet nor has supplied the information which was called upon for the purposes of calculating the available surplus. The profit earned is as deposed by the witness for Party No.2 will have to be taken to be the gospel truth for the purposes of decision of these References. The employees members of Party No.2 are therefore entitled for bonus @ 20% for the period under the respective References.

10. The further submission of learned counsel for the Party No.2 is that the application for consolidation of all the References Ex.17 (Reference IT No.8/85) has been made with an intention that the dispute is pertaining only to the distribution of bonus and being the identical facts and dispute having involved in the respective References the Court has allowed the application. The order passed by the then learned Presiding Officer below Ex.17 has not been challenged by the Party No.1. Now it is not open for party No.2 to have any contest on this point. In short, the submission is the employees are entitled for 20% bonus for the period under dispute and the References be answered in the affirmative.

11. The submission in rival by Party No.1 is that for Reference the dispute has to be raised under the Industrial Disputes Act, 1947 before the Conciliation Officer. The Conciliation Officer makes his report to the Government and then the Government makes the Reference under section 12(4) of I.D. Act if satisfied by the report made to the Government. Whatever is the period under dispute the separate disputes were raised before the Conciliation Officer, separate reports were submitted by the Conciliation Officer to the Government and the competent authority of the Government has made the separate References under section 12(4) of I.D. Act to this Tribunal. All these References are not of the one year or the disputes of various counts within one financial year and therefore the order of consolidation of the References is *void ab-intio*.

12. It is further argued that the Party No.1 while giving reply to Ex.9, application for direction to produce consolidated balance sheet and then reply to application Ex.17 for consolidation of proceedings, in additional reply, while presenting the written statement at Ex.39 (Reference IT No.8/85), has time and again pressed that every individual dispute will have to be answered independently. It is time and again brought to the notice of then then learned Presiding Officer hearing these applications that there is a dissolution of partnership firm in the year 1983. There is a constitution of new partnership firms upon the dissolution w.e.f. 1st January 1983. The firm at Nagpur is now making the publication at Nagpur only under the style Nav-Bharat. In short, the Party No.1 at Nagpur titled Nav-Bharat Press at Nagpur has no control and power over the publication at other places such as Madhya Pradesh and Chattisgarh. They are not in possession of balance sheets of those firms. The Party No.1 cannot file a consolidated balance sheet nor such directions can be issued. The consolidated balance sheet for the year 1981-82 and 1982-83 *i.e.* till dissolution of partnership has been placed on record. The officer authorised by Party No.1 also filed affidavit to the extent that Party No.1 is not in possession and power over the other establishments at Madhya Pradesh and Chhatisgarh, and therefore cannot produce the balance sheet. The orders below Ex.9 and 17 being *void ab-intio* the References are to be answered in the negative. The Party No.2 has filed a consolidated statement of claim in Reference No.8/85, the bonus is paid @ 8.33% and there being no available surplus the Reference (IT) No. 8/85 is also to be answered in the negative. There is no statement of claim in other References and therefore they are to be dismissed by answering them in the negative.

13. The pleadings i.e. statement of claim, and the written statement has been raised in common and copies of the same are being placed on the record of each Reference. The submissions made by Party No.1 in all the matters are common amongst the aforesaid arguments advanced by learned counsel for the Party No.1. It is vehemently argued that the Reference cannot be consolidated and cannot be decided together.

14. In rival the submission is that there is no prohibition in recording the statement of claim in common because the point of dispute is identical under all the References. The Party No.1 has paid minimum bonus of 8.33% under the Payment of Bonus Act and the Party No.2 is raising the dispute of available surplus for the purposes of claiming bonus @ 20% for all the years under Reference.

15. It is not in controversy that the Conciliation Officer having failed in conciliating the dispute between the parties has submitted his report and in turn the competent authority of Government has made a Reference to the Industrial Tribunal Bench at Nagpur for decision. The attention is invited to Section 10(1)(d) of Industrial Disputes Act. Section 10(1)(a), (b), (c), (d) reads as before :

“**S.10.** Reference of disputes to Boards, Courts or Tribunals.—(1) where the appropriate Government is of the opinion that any industrial disputes exists or is apprehended, it may at any time, by order in writing.—

(a) refer the dispute to a Board for promoting a settlement thereof ; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication: ”

Needless to state that the Government may refer “any matter appearing to be connected with or relevant to the dispute” to a court for inquiry under clause (d) of section 10(1) for the purposes of enquiring into such matter. Needless to state that for making a Reference (a) appropriate Government must be of the opinion that an industrial dispute exists or is apprehended, (b) the matter referred to must be one appearing to be connected with or relevant to an industrial dispute, and (c) the order of reference must be an order in writing. It is thus, there does exist a dispute to be termed as industrial dispute and accordingly it has been referred. Needless to state that a discretion of the “appropriate Government” under section 10(1) is very wide to refer an industrial dispute or “any matter appearing to be connected with or relevant to the dispute” where it relates to any matter specified in the Second Schedule or the Third Schedule to a Tribunal for adjudication. The dispute referred to the Industrial Tribunal Bench at Nagpur is also not in controversy.

16. I may not be wrong if I say that primary duty of the adjudicating authority is to bring peace by giving an appropriate relief to the parties. There may not be any dispute that the Act gives full powers to the Tribunal to adjudicate upon all such matters in dispute between the employer and workmen and give adequate relief. To set an example of the aforesaid, I make a

reference to a citation of Western India Automobile Association-*vs*- Industrial Tribunal (1949(I) L.L.J. 245 F.C.) per Mahajan J. “For instance, where the dispute is with respect to the termination of service of a workman, the Tribunal has the jurisdiction to award reinstatement and back wages if the termination is found to be wrongful.” In my humble opinion the Industrial Adjudicator therefore to adjudicate upon the dispute between the employer and their workmen and in the course of adjudication the Tribunal or Adjudicator must determine the rights and the wrong of the claim made. Simultaneously the Adjudicator in doing so is given free hand to apply the principles of social justice, equity and good conscious, without attaching undue importance to legal technicalities and keeping in view the further principle that their jurisdiction is invoked not for the enforcement of mere contractual obligations but for preventing labour practices regarded as unfair and for restoring industrial peace on the basis of collective bargaining. The reference can be made to Niemla Textile Finishing Mills Ltd.-*vs*- Second Punjab Tribunal (1957 (I) L.L.J. 460 SC). (The citations being not available the references are made from the Text of O.P. Malhotra “The Law of Industrial Disputes” Fifth Edition Volume 1 1998 Reprint of 1999). The Hon’ble Supreme Court assigned a more positive role to the concept of social justice in industrial adjudication. Gajendragadkar, J. persistently emphasised that “social and economic justice has been given a place of pride in our constitution.” (Crown Aluminium Works-*vs*- Their Workmen (1958 (I) L.L.J. page1 SC) and State of Mysore-*vs*-Workers In Gold mines (1958 (II) L.L.J.479). There further in a case of Rai Bahadur Diwan Badri Das -*vs*- Industrial Tribunal, Punjab (1962 (II) L.L.J. 366) the Hon’ble Supreme Court observed that “the doctrine of the absolute freedom of contract has thus to yield to the higher claims for social justice” “under the impact of demand of social justice the doctrine of absolute freedom of contract has been regulated.” In the light of the aforesaid guidelines and principles the order passed by then Presiding Officer of consolidation of proceedings is governing for the purposes of statement of claim, written statement and evidence in common by the parties to Reference. It appears that the learned Presiding Officer must have taken aid of the Code of Civil Procedure in conduct of the Reference before him because of the identical dispute under each and every Reference. I am to honour the submissions made by learned counsel Shri Atrey for Party No.1 that each dispute has to be decided separately. I am answering every dispute separately with the aid of common statement of claim, oral and documentary evidence on record and the pleadings raised by the parties. But I respectfully defer to the submissions made by him that because there is an order of consolidation the order is a lugatory *i.e.* nul and void and therefore the Reference has to be answered in the negative. In my humble opinion at the most the then learned Member might have committed irregularity in clubbing the References but the clubbing is only for the purposes of statement of claim as per order below Ex.17. The same has been adopted by learned counsel for the Party No.1. by filling a composite written statement to the statement of claim in Reference No.8/85 adopting it for all other References. Party No.2 has kept the copies of statement of claim on the record of each Reference. The common evidence has been led and cross examination in common for all the References has been conducted by the learned counsel for the Party No.1. Nothing had prevented Party No.1 to challenge the order of clubbing the References as well the directions of production of composite Balance-sheets if was not satisfied with it. But once it is accepted and worked upon it, in my humble opinion, now Party No.1 cannot shout over own mistakes to defeat the rightful claim under adjudication. It is for all these reasons, in my humble opinion the Reference cannot be discarded or thrown away and the Reference will have to be answered individually with the aforesaid common pleadings and evidence by parties.

17. Section 2(4) defines allocable surplus. Section 2(4), (a) and (b) reads as before:

“S.2(4). “allocable surplus” means,-

(a) in relation to an employer, being a company (other than a banking company) which has not made the arrangements prescribed under the Income Tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of section 194 of that Act, sixty-seven per cent of the available surplus in an accounting year;

(b) in any other case, sixty per cent of such available surplus;”

Section 2(6) defines allocable surplus. It reads as before:

“S.2(6). “available surplus” means the available surplus computed under section 5;”

Needles to reproduce the Section but it is sufficient to take to recourse of the same. Section 5 deals with computation of available surplus. Section 10 deals with payment of minimum bonus and Section 11 deals with payment of maximum bonus. Section 15 deals with set on set off of allocable surplus. Section 22 deals with Reference of disputes under the Act. Section 22 reads as before:

“S.22. Reference of disputes under the Act. Where any disputes arises between an employer and his employees with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public sector, then, such dispute shall be deemed to be an industrial disputes within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), or of any corresponding law relating to investigation and settlement of Industrial Disputes, in force in a State and the provisions of that Act, or, as the case may be, such law, save as otherwise expressly provided apply accordingly.”

Needless to state that the dispute with respect to the bonus payable under the Act are deemed to be an Industrial Disputes within the meaning of Industrial Disputes Act, 1947. A reference may be made to a citation of S.G. Pharmaceuticals -vs-Sarabhai Chemical Staff Association (1999 I C.L.R. 404). (Commercial's Commentary on Payment of Bonus, 3rd Edition, S. Krishnamurthi page 272 below Sec.22). Mr. S.D. Thakur learned counsel for the Party No.2 in support of his arguments on the point of entitlement for more bonus placed reliance on the following citations (1) The Workmen of H.M.T. -vs-The Presiding Officer, National Tribunal, Calcutta and Ors. (1973)(2) S.C.C. 277). Para 17 reads as before:

“Para 17. Then the question is regarding the applicability of Section 16. The evidence of M.W.1, which has been accepted by the Tribunal, is to the effect that the unit No.IV was started in July 1963 and production and sale commenced only from 1965-66. Section 16(1) grants exemption from payment of bonus to establishment newly set up for a period of six years following the accounting year in which the goods produced or manufactured are sold for the first time and, in the alternative, upto the year when the new as establishment result in profit, whichever is earlier. Unit No.IV is to be treated as an establishment newly set up, as contemplated under section 16(1). If so, the exemption claimed would be fully justified because the contingency contemplated under sub-clauses (a) or (b) of section 16(1) has not happened during the relevant years, 1964-65 to 1966-67. Even if Unit No.IV is considered to be a new department, undertaking or branch set up by the existing establishment, namely, the Hindustan Machine Tools Ltd., section 16(2) makes the provisions of sub-section (1) apply to such units. The proviso to sub-section (2) of section 16 does not stand in the way of the

management's claim for exemption because there is no evidence that for any year, after unit No.IV was set up, bonus was paid to the employees of all the Units, on the basis of consolidated profits of all such Units. In fact the evidence as we have already stated, is contra. No doubt it is in evidence that the employees of the Head Office have been treated at par with the employees of Units I and II at Bangalore. In the case of the Head Office, calculation of bonus on the basis of consolidated accounts is justified; but that does not affect the principle to be applied to the separate units for which separate accounts, separate balance sheets and separate profit and loss accounts are maintained. The proviso to sub-section (2) of section 16 will come in the way of the management only if bonus is paid in any year to the employees of all the Units on the basis of the consolidated accounts. That is not the evidence in this case. We may also state that the evidence in this regard has been very elaborately considered by the Tribunal and we agree with the conclusions arrived at by it. Therefore, the exemption claimed under section 16(1) by the management for the years 1964-65 to 1966-67 in respect of Unit No.IV, the appellant, has been correctly accepted by the Tribunal. This disposes of the points raised by the appellant in the appeal."

(2) Workmen Employed in Associated Rubber Industry Ltd., Bhavnagar-Vs-Associated Rubber Industry Ltd., Bhavnagar and Anr. [1985(4) S. C. C. 144.] Para 5 reads as before:

" Para 5. If we now look at the facts of the case, what do we find ? A new company is created wholly owned by the principle company, with no assets of its own except those transferred to it by the principle company, with no business or income of its own except receiving dividends from shares transferred to it by the principle company and serving no purpose whatsoever except to reduce the gross profits of the principle company. These facts speak for themselves. There cannot be direct evidence that the second company was formed as a device to reduce the gross profits of the principal company for whatever purpose. An obvious purpose that is served and which stares one in the face is to reduce the amount to be paid by way of bonus to workmen. It is such an obvious device that no further evidence, direct or circumstantial, is necessary. It was argued that in 1971, the Aril Holdings Ltd. was wound up and amalgamated with The Associated Rubber Industry Ltd. and that this circumstance showed that the initial creation of Aril Holdings Ltd. was not a device of avoidance. But the Learned Counsel for the company was unable to explain why in the first instance Aril Holdings Ltd. was created and why later it was wound up. Probably, after Aril Holding Ltd. was created, some unforeseen difficulties arose which have not been brought to light before is and it became necessary to wind it up and amalgamated it with The Associated Rubber Industry Ltd. We are therefore, satisfied that the amount of dividend from INARCO Ltd. received by the Aril Holding Ltd. should be taken into account in assessing the gross profit of The Associated Rubber Industry Ltd. for the purpose of calculating the rate of bonus payable to the workmen of The Associated Rubber Industry Ltd. The appeal is allowed with costs and it is declared that the workmen of The Associated Rubber Industry Ltd., Bhavnagar are entitled to be paid bonus at the rate of 16% for the year 1969."

17. The Learned Counsel for the Party No.2 has argued that the Party No.1 has not complied with the orders passed by them Learned Presiding Officer below Ex.9. The Learned Presiding Officer has passed an order directing Party No.1 to produce a composite balancesheet. I may not be wrong if I infer by consolidated balancesheet thereby meaning the balancesheet of the publication from Nagpur, Indore, Bhopal etc.

18. In rival the Learned Counsel for the Party No.1 has placed affidavit on record and time and again submitted of dissolution of old partnership and creation of new partnership with effect from 1st January 1983. Nagpur is separated, Madhya Pradesh is separated and Chattisgarh is also separated. It is brought on record that having the earlier partnership dissolved and creating of independent units the Party No.1 at Nagpur is not in power and custody of the balancesheets of those units.

19. I may not be wrong if I say that the dissolution of partnership of the then Nav-Bharat Hindi Daily at Nagpur, the publication and office at Nagpur was operating the publication of all other places such as Indore, Raipur, Bhopal and Jabalpur. The Party No.1 has not produced the documents of dissolution of partnership neither has filed the partnership deed of new creation as alleged by him. One does not know whether same are the partners at the establishments shown to be separated in the stated regions. The partners which were holding all the rights of publication at various destinations had retained the goodwill of "Nav Bharat" Hindi Daily. One cannot say that whether this dissolution and creation is for the purposes of avoiding the statutory liabilities and/or defeat the claims of the rightful claimants. The separate balancesheets as alleged by Party No.1 after 1983 are also not produced on record for the years in question under the separate References. Nothing had prevented Party No.1 to show and established the bonafides. I may not be wrong If I say that the Party No.1 has to draw the adverse inference to reach to the conclusion of availability of allocable surplus for distribution of Bonus exceeding 8.33%.

20. In this Reference the dispute is regarding the payment of bonus @ 20% to employees of Nav Bharat Hindi Daily, Nagpur for the accounting year 1987-88. The relevant part of the report of Conciliation Officer reads as before:

“समेट कार्यवाहीत व्यवस्थापनातर्फे दिनांक १९ जानेवारी १९९८ ला कार्मीक अधिकारी हजर झाले. त्यांना समेट अधिकाऱ्यांनी सन १९८६-८७ ची बॅलेन्सशीट सादर करण्याबाबत सांगितले तसेच बोनस प्रदान अधिनियम, १९६५ अंतर्गत अ, ब व क रजिस्टर दाखल करण्यासंबंधी सुध्दा सांगितले. याबाबत कार्मीक अधिकाऱ्यांनी नोंद घेतली. दिनांक २ फेब्रुवारी १९८९, १५ फेब्रुवारी १९८९, ३ मार्च १९८९, ४ एप्रिल १९८९ व १७ एप्रिल १९८९, या तारखांना व्यवस्थापनातर्फे कोणीही हजर झाले नाही. समेट अधिकाऱ्यांनी त्यांचे पत्र क्रमांक काउआ/ औसंशा/ समेट-२, कक्ष ३/ ३२८४, दिनांक ४ फेब्रुवारी १९८९ नुसार संबंधित अभिलेख सादर करण्यासंबंधी सांगितले. परंतु उपरोक्त अभिलेख सादर न केल्यामुळे समेट कार्यवाही बंद करण्यात आली. दिनांक १७ एप्रिल १९८९ ला समेट कार्यवाहीत व्यवस्थापन व कामगार संघटना यांच्यात समझोता होणे अशक्य असल्यामुळे समेट कार्यवाही बंद करण्यात आली. सबब हा असफल अहवाल सादर करण्यात येत आहे.”

The demand of bonus @ 20% for the accounting year 1987-88 is a document dated 26th September 1988. The demand reads as before:

“सभी कर्मचारियोंको ३० जून १९८८ को समाप्त का आर्थिक वर्ष के लिये २० प्र.श. बोनस दिया जाये क्यो की, संबंधित आर्थिक वर्ष में “नवभारत” ने असाधारण प्रगती की है, और उसकी इस अद्भुत प्रगतीमे कर्मचारियोंका भी योगदान है।”

The documents presented before the Conciliation Officer are being transmitted alongwith Reference.

21. The Party No.2 filed application Ex.9 in Reference (IT) No.8/85 for supply of consolidated balancesheet. The application was allowed by order dated 8th January 2001 and Party No.1 was directed to file consolidated balancesheet asked for. However, the Party No.1 did not file balancesheet despite of courts orders.

22. The Party No.1 by filing copies of balancesheets ending 31st December 1981 in Reference (IT) No. 1/84, in my opinion, has made an attempt to show every centre separate. In this regard I invite attention of Learned Counsel for the parties to the composite written statement in Reference (IT) No.8/85 because copy of the same is not placed on record by Party No.1 in this

Reference. I there further invite attention to the cross examination of witness commonly conducted in Reference (IT) No.8/85. The witness for Party No.2 has made a categorical statement of not supplying the consolidated balancesheets. The Party No.1 has not examined the witness and therefore no opportunity of cross examination is available to the Party No.2.

23. The Party No.2 having all documents to his command and possession did not place it on record. Therefore, the adverse inference has to be drawn against Party No.1. It is in these circumstances the Reference deserves to be answered in the affirmative.

24. Whatever documents available on record suggests that Party No.1 was in position to pay bonus more than 8.33%. To strike the balance I am of the opinion that the dispute is regarding 11.67% more bonus than the already paid. Half of it would come to 5.86% and the round figure comes to 6% over and above already paid. In the light of the foregoing discussions and upon hearing of the parties the Reference is answered in the following terms.

Award

(i) The Reference for demand of bonus @ 20% is partly answered in the affirmative. The Party No.1 is to pay 6% bonus over and above 8.33% already paid for the accounting year 1987-1988.

(ii) The parties shall bear their own cost.

(iii) The Award be sent to the Additional Commissioner of Labour, Nagpur.

(iv) The conciliation proceedings be returned back to the Conciliation Officer.

Dictated and pronounced in open Court.

Nagpur,

dated the 21st February 2008.

M. P. KUKDAY,

Presiding Officer,

Industrial Tribunal, Nagpur.

Additional Commissioner of Labour,
Nagpur.